

SANTA FE BOARD OF COUNTY COMMISSIONERS

COMMISSION CHAMBERS

COUNTY ADMINISTRATION BUILDING

REGULAR MEETING
(Public Hearing)

February 20, 2002 - 2:00 p.m

2088493

Amended Agenda

- I. Call to Order
- II. Roll Call
- III. Pledge of Allegiance
- IV. Invocation
- V. Approval of Agenda
 - A. Amendments
 - B. Tabled or Withdrawn Items
- VI. Approval of Minutes *1/29/02*
- VII. Consent Calendar:

approved w/changes;

A. Request Adoption of Findings of Fact and Conclusions of Law for the Following Land Use Cases:

1,2,50 approved under cond

- 1. CDRC CASE #MIS 01-5402 - Avanti Master Plan Time Extension (Approved)
- 2. CDRC CASE #Z 01-5380 - Montano Master Plan (Approved)
- 3. CDRC CASE #V 01-5460 - 4H Club Sign Variance (Approved)
- 4. CDRC CASE #V 01-5270 - Lynn Frost Variance (Approved)
- 5. EZ CASE #MIS 01-4630 - Santo Nino de Felipe Time Extension of Final Plat (Approved)

Completed noted

Approved

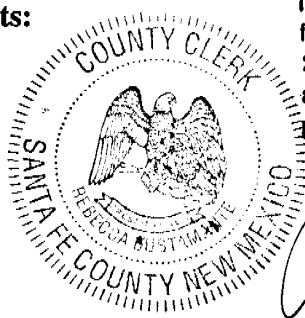
B. Resolution No. 2002 - A Resolution Requesting a Transfer from the Community & Health Development Department/Community DWI Grant Program to the Santa Fe County Sheriff's Office for Expenditure in Fiscal Year 2002. (Community & Health Development Department)

VIII. Presentations and Awards:

A. Presentation of Proposed Revisions to the Land Use Assumptions and Capital Improvement Plan for Consideration by Board of County Commission as Required by State Development Fee Act and Santa Fe County Ordinance 1995-04 (Fire Department)

IX. Administrative Items:

A. Committee Appointments:



COUNTY OF SANTA FE
STATE OF NEW MEXICO *1973* SS *423*
I hereby certify that this instrument was filed
for record on the *18* day of *Mar* A.D.
20 *02* at *10:03* o'clock *A*.m
and was duly recorded in book *2088*
page *493-1093* of the records of
Santa Fe County

Witness my Hand and Seal of Office
Rebecca Bustamante
County Clerk, Santa Fe County, N.M.

Marcella Salazar
Deputy

AI filed Matter 2088491
needs to come back to Commission for approval

approved

X. Staff and Elected Officials Items:
1. Appointment to Lodgers' Tax Advisory Board

A. Community & Health Development Department

1. Presentation of Affordable Housing Regulations

B. Land Use Department

1. Request Authorization to Publish Title and General Summary of an Ordinance Amending Article XV of the Santa Fe County Land Development Code (Ordinance 1996-10) as Amended, Community College District Land Use and Zoning Regulations to Clarify the Design Management Process; to Add and Amend Design, Development and Zoning Standards; and to Amend the Land Use Table

approved

2. Approval of a Joint Powers Agreement Between the City of Santa Fe and Santa Fe County Establishing an Urban Growth Area within the 2 Mile Extraterritorial Zone

Campuzano voted no
Sullivan approved
Campuzano voted no

3. EZ CASE #DL 01-4070 - Tom and Kathy Sedillo. Tom and Kathy Sedillo Request Plat Approval to Divide 4.98 Acres into Two Tracts. The Tracts will be known as Lot 1-A (2.4916 Acres) and Lot 1-B (2.4919). The Described Property is Located off Calle Estevan, within Pinon Hills Subdivision, Section 25, Township 17 North, Range 8 East, (2-Mile EZ District). Audrey Romero (For Deliberation Only)

C. Public Works Department

1. Request Approval of Change Order Number One for the County Road 64-L (Richards Avenue) Road Improvement Projects - EMCO

approved

D. Utilities Department

1. Resolution No. 2002 - A Resolution Calling for Cooperation Between the City and the County of Santa Fe for Funding of a Surface Water Diversion Project at the Rio Grande

approved

2. Request Adoption of the Memorandum of Understanding Among USDA Forest Service, Santa Fe National Forest, USDI Bureau of Land Management, USDI Bureau of Reclamation, City of Santa Fe, County of Santa Fe and Las Campanas Limited Partnership, for the Proposed Buckman Diversion Project

approved

3. Request Approval of Water Rights Purchase Agreement between Santa Fe County and Stone Canyon, LLC

Tabled

E. Matters from the County Attorney, Steven Kopelman

1. Resolution No. 2002 ²¹A Resolution Determining Reasonable Notice for Public Meetings of the Santa Fe Board of County Commissioners and all Commissions, Committees, Agencies or any Other Policy-Making Bodies Appointed by or Acting Under the Authority of the Board of County Commissioners

approved

2. Request Authorization to Publish Title and General Summary of an Ordinance Regulating the Use of Santa Fe County Rights of Way by Utility Companies

Tabled

3. Resolution No. 2002 ²²A Resolution Amending Resolution 1999-98 to Expand the Service Area of Comcast Cablevision, Inc. (Successor to Mickelson Media, Inc.) to Include the Unincorporated Area of Santa Fe County and to Increase the Franchise Fees Payable to Santa Fe County
Request Authorization to Publish Title and General Summary of an Ordinance Adopting a County Capital Outlay Gross Receipts Tax

approved
to move to Public Hearing

5. Executive Session

a. Discussion of Pending or Threatened Litigation

i. Santa Fe County vs. Town of Edgewood (Campbell Ranch Annexation)

ii. Discussion of Other Pending or Threatened Litigation

b. Discussion of Possible Purchase, Acquisition or Disposal of Real Property or Water Rights

F. Matters from the County Manager, Estevan R. Lopez

tabled 1. Request Authorization to Appropriate \$250,000 of Commission Capital Outlay Funds for Expenditure in FY 2002

approved 2. Request Approval of Intergovernmental Agreement (IGA 0025-2) between the Federal Bureau of Prisons (BOP) and Santa Fe County to House BOP Adjudicated Juvenile Inmates at the Santa Fe County Youth Development Program Operated by Cornell, Inc.

tabled 3. Request Approval of a Joint Powers Agreement between the City of Santa Fe and the County of Santa Fe to Cover the Maintenance Costs of the Printrak Automated Fingerprint Identification System (AFIS)

G. Matters of Public Concern - NON-ACTION ITEMSH. Matters from the Commission

Withdrawn 1. Resolution No. 2002- A Resolution Declaring a Policy of Non-Discrimination and Friendliness Toward Immigrants; and Providing for an Immigration Resource and Advisory Committee WITHDRAWN

XI. Public HearingsA. Land Use Department Items:

3 1. Ordinance No. 2002 – An Ordinance Amending Article XIII, Ordinance 1998-5, of the Land Development Code (Ordinance 1996-10) to Refine the Planning Process for the Development of Community Plans and to Include Planning Elements as Outlined in the Santa Fe County Growth Management Plan, Resolution 1999-137. Judy McGowan (First Public Hearing)

Withdrawn 2. CDRC CASE #MIS 01-5630 – Eldorado Office Park Master Plat Request. Ron Sebesta, Applicant, Linda Tigges, Agent, Request Authorization to Proceed with a Master Plat for a Commercial Subdivision to Include the Creation of up to 14 Lots on 12 Acres, as Set Forth in Article V, Section 5.6 of the Santa Fe County Land Development Code. The Property is Located Southeast of the Intersection of Avenida Vista Grande and US 285 in Eldorado, within Section 16, Township 15 North, Range 10 East, (Commission District 5). Penny Ellis-Green

Tabled 3. CDRC CASE #MIS 00-5812 – Vallecitos De Gracia Amendment of a Condition. Jim Brown, Applicant, Jim Siebert, Agent, Request an Amendment to a Condition on a Preliminary Plat for Vallecitos De Gracia, a 16-Lot Residential Subdivision on 42-Acres, Which Requires Two All-Weather Crossings Capable of Accommodating a 100-Year Storm. The Amendment Would Result in a Variance of Article V, Section 8.3.4 of the Land Development Code. The Property is Located along County Road 54, Northwest of the Downs at Santa Fe Racetrack, within the Traditional Historic Community of La Cienega, within Sections 22, 27 and 28, Township 16 North, Range 8 East, (Commission District 3). Wayne Dalton

*Approved
4-1
Campozz
Mored*

4. AFDRC CASE #A/V 01-5580 – Henry Romero Appeal/Variance. Henry Romero, Applicant, is Appealing the Land Use Administrator’s Decision to Deny the Placement of a Second Home on 1.35 Acres, Which Would Result in a Variance of Article III, Section 10 (lot size requirements) of the Land Development Code. The Property is Located at 5124 Avenida De Seasareao in the Traditional Community of Agua Fria, within Section 31, Township 17 North, Range 9 East (Commission District 2). Wayne Dalton

*Campozz + Sullivan
Voted against
Approved
3-2*

5. CDRC CASE #V 01-5510 – Benny Zamora Variance. Benny Zamora, Applicant, Requests a Variance of Article III, Section 10 (lot size requirements) of the Land Development Code to Allow a Second Dwelling Unit on 1.4 Acres. The Property is Located at 05 Taylor Loop, Within Section 5, Township 15 North, Range 8 East (Commission District 3). Wayne Dalton

Tabled

6. AFDRC CASE #V 01-5340 – Horacio Baca Variance. Horacio Baca, Applicant, Requests a Variance of Article III, Section 10 (lot size requirements) of the Land Development Code to Allow the Placement of a Second Home on 0.419 Acres. The Property is Located in the Traditional Community of Agua Fria, Within Section 31, Township 17 North, Range 9 East, (Commission District 2). Wayne Dalton **TABLED**

*Approved
Under #1
Public Hearing*

7. CDRC CASE #A 01-5351 – Garcia Subdivision Appeal. John Maruska, Applicant, is Appealing the County Development Review Committee’s Decision to Uphold the Land Use Administrator’s Decision to Allow a Summary Review Subdivision to Divide 12.6 Acres into 5 Lots for John Paul & Veronica Garcia. The Subject Property is Located on Shenandoah Road in the North Ford Area, Within Section 25, Township 15 North, Range 8 East (Commission District 3). Wayne Dalton

*Approved
W/Action*

8. CDRC CASE #Z 01-5470 – Marianna Hatten Bed and Breakfast. Marianna Hatten, Applicant, Requests Master Plan Zoning With Preliminary and Final Development Plan Approval for a Three Bedroom Bed and Breakfast to be Operated out of an Existing 6,817 Square Foot Residence on 65.2 Acres. The Property is Located at 29 High Feather Range, off of Goldmine Road, Within Section 31, Township 14 North, Range 8 East (Commission District 3). Wayne Dalton

XII. ADJOURNMENT

The County of Santa Fe makes every practical effort to assure that its meetings and programs are accessible to the physically challenged. Physically challenged individuals should contact Santa Fe County in advance to discuss any special needs (e.g., interpreters for the hearing impaired or readers for the sight impaired).

2088497

SFC CLERK RECORDING 08/17/2004

SANTA FE

BOARD OF COUNTY COMMISSIONERS

REGULAR MEETING

February 20, 2002

Paul Duran, Chairman
Jack Sullivan, Vice Chairman
Paul Campos
Javier Gonzales
Marcos Trujillo

SANTA FE COUNTY
REGULAR MEETING
BOARD OF COUNTY COMMISSIONERS

February 20, 2002

This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 2:00 p.m. by Chairman Paul Duran, in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

Following the Pledge of Allegiance, roll was called by County Clerk Bustamante and indicated the presence of a quorum as follows:

Members Present:

Commissioner Paul Duran, Chairman
Commissioner Marcos Trujillo
Commissioner Javier Gonzales
Commissioner Paul Campos
Commissioner Jack Sullivan

Members Absent:

None

IV. INVOCATION

An invocation was given by Clerk Bustamante.

V. APPROVAL OF THE AGENDA

- A. Amendments**
- B. Tabled or withdrawn items**

CHAIRMAN DURAN: Estevan, are there any changes from staff?

ESTEVAN LOPEZ (County Clerk): Mr. Chairman, yes there are. First, we've got a couple of additions to the original agenda that was posted. The first is under Consent Calendar, item B. It's Resolution No. 2002-___, a resolution requesting a transfer from the Community and Health Development Department/Community DWI grant program to the Santa Fe County Sheriff's Office for expenditure in fiscal year 2002.

Next, there's an additional item under X. Staff and Elected Officials' items, E, Matters from the County Attorney. Item number 4. We request that you add, Request authorization to publish title and general summary of an ordinance adopting the County Capital Outlay gross receipts tax and we've also, under County Attorney, we've added another item under executive session, item A. 2. Discussion of other pending and threatened litigation.

Those are the additions to the agenda. We also have a couple of tabling requests and withdrawals and so forth. The first is under X. D. 3, under the Utilities Department. We're requesting that you table item 3, Request approval of water rights purchase agreement between Santa Fe County and Stone Canyon, LLC. We show also under—

CHAIRMAN DURAN: Excuse me, Estevan. What was that last one?

MR. LOPEZ: That was a request for tabling of item X. D. 3.

CHAIRMAN DURAN: Okay. Thank you.

MR. LOPEZ: Under X. H.1. This item has been withdrawn. The non-discrimination resolution. And we also, under Public Hearings, XI. A. 2, the Eldorado Office Park master plan request, that request has been withdrawn. We received a letter requesting that it be withdrawn.

Under XI. A. 6. Horacio Baca Variance, that has been tabled. And then we'd also like to request that two items be moved. The first, under matters from the County Attorney. That is item X. E. 3, the Comcast Cablevision resolution. That we would like to move under Public Hearings as item 2 in Public Hearings. [This item was moved to directly before the Public Hearing items; it was not noticed to be heard under Public Hearings.] And XI. A. 7, the Garcia Subdivision appeal, we request that that be moved to item number 1 under Public Hearings because of other staff commitments later in the evening.

CHAIRMAN DURAN: So 7 goes to 1?

MR. LOPEZ: Seven would go to 1. That's correct. And then immediately after that the Comcast. And then continue on as listed.

CHAIRMAN DURAN: Okay. So then 1 becomes 3.

MR. LOPEZ: Yes. Mr. Chairman, those are all of the requested amendments, tablings and withdrawals.

CHAIRMAN DURAN: Any other changes from the Commission? Or requests? Commissioner Sullivan.

COMMISSIONER SULLIVAN: I don't have a change or a request but if we start the Public Hearings and someone is not here who was planning to be further down on the list, then we just skip over them?

CHAIRMAN DURAN: Yes.

COMMISSIONER SULLIVAN: Because if we're moving kind of the last to the first there, I was just concerned they may not be here.

CHAIRMAN DURAN: Any other amendments or requests?

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman. To approve the agenda as amended, yes.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

VI. APPROVAL OF MINUTES: January 29, 2002

CHAIRMAN DURAN: Are there any changes?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I had some housekeeping changes which I've given to the recorder. If the Commission would like to see them we can provide that to them or if it's all right, we can just approve them as amended.

CHAIRMAN DURAN: Is that acceptable to the Board? Is there a motion to approve?

COMMISSIONER SULLIVAN: I move to approve the minutes as amended.

COMMISSIONER TRUJILLO: Second, Mr. Chairman.

CHAIRMAN DURAN: Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

VII. CONSENT CALENDAR

A. Request adoption of findings of fact and conclusions of law for the following land use cases:

1. **CDRC Case #MIS 01-5402. Avanti Master Plan time extension (approved)**
2. **CDRC Case #Z 01-5380. Montano Master Plan (approved)**
3. **CDRC Case #V 01-5460. 4-H Club Sign Variance (approved)**
4. **CDRC Case #V 01-5270. Lynn Frost Variance (approved)**
5. **EZ Case #MIS 01-4630. Santo Niño de Felipe time extension of final plat (approved)**

CHAIRMAN DURAN: Are there any issues on the Consent Calendar that the Commission would like to isolate for further discussion?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: A. 3 and 4, are variances that I wouldn't approve even as to form. So I'd like to consider them separately.

CHAIRMAN DURAN: Okay. So we will remove for further discussion VII. A. 3 and 4. Other than that, the Chair will entertain a motion to approve items 1, 2, and 5.

COMMISSIONER TRUJILLO: So moved, Mr. Chairman.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN DURAN: Okay. Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

VIII. A. 3. CDRC Case #V 01-5460. 4-H Club Sign Variance (approved)

CHAIRMAN DURAN: Commissioner Campos, did you have a comment or two?

COMMISSIONER CAMPOS: Just a short comment as to 3 and 4. Basically, the same objection I've had for a while as to no jurisdiction by the BCC to grant these variances. No authority by ordinance. That's it.

CHAIRMAN DURAN: So that's your comment on both 3 and 4?

COMMISSIONER CAMPOS: Yes sir.

CHAIRMAN DURAN: Is there a motion?

COMMISSIONER TRUJILLO: Move to approve, Mr. Chairman.

COMMISSIONER GONZALES: Second.

CHAIRMAN DURAN: There's a motion to approve items VII. A. 3 and 4, with a second. Any further discussion? Let the record note Commissioner Campos' objection. Those in favor signify by saying "aye." [Commissioners Trujillo, Gonzales, Sullivan and Duran voted aye.] Opposed? [Commissioner Campos voted nay.] Motion carries.

VII. B. Resolution No. 2002-19. A resolution requesting a transfer from the Community and Health Development Department/Community DWI grant program to the Santa Fe County Sheriff's Office for expenditure in fiscal year 2002

STEVE SHEPHERD (Health Division Director): Mr. Chairman, this is a transfer to the Sheriff's Department so that they can participate in multi-jurisdictional DWI roadblocks. I stand for any questions?

CHAIRMAN DURAN: Any questions of staff? What's the pleasure of the Board?

COMMISSIONER GONZALES: Move to approve.

COMMISSIONER TRUJILLO: Second, Mr. Chairman.

CHAIRMAN DURAN: Motion to approve with a second. Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

Steve, I just have one question. We're having a meeting to talk about the DWI grant program?

MR. SHEPHERD: That's correct.

CHAIRMAN DURAN: Has that been set up yet?

MR. SHEPHERD: I believe it's scheduled for March 5th at 1:30.

CHAIRMAN DURAN: Okay. For any of the Commissioners that want to attend, I asked Estevan to set up a meeting with the Community and Health Development Department to discuss the programs that the DWI grant money funds and just kind of get an analysis—not an analysis but a presentation on where the money is going and what programs are being implemented.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Also at the last meeting, you had asked Mr. Anaya to give us copies of, mail copies of that request for proposals that they were in a hurry to get out for the \$300,000 in DWI funding.

CHAIRMAN DURAN: Right.

COMMISSIONER SULLIVAN: Do you know what the status of that is?

ROBERT ANAYA (Community & Health Development Director): Mr. Chairman, Commissioners, we do have that draft that will be given to you this week. We just about have it complete. One of the things that we found out is we're going to have an RFP portion, but we're going to be able to utilize a lot of the existing contracts we already have for the health services with the contractors that already exist, the health providers. We will provide you and show you which contracts we're proposing to increase as well as give you a copy of that draft RFP this week.

CHAIRMAN DURAN: Estevan, this is different from the other meeting that we're going to have to discuss the assessment facility.

MR. ANAYA: Mr. Chairman, Commissioners, yes. This is the \$300,000 allocation that we need to get budgeted and expended between now and June 30th, so that we don't lose that revenue. But we're still planning on having the work study with the Commission on the CARE Connection issue as a whole.

CHAIRMAN DURAN: Okay.

MR. ANAYA: On that meeting that you asked about, that's next Friday, a week from Friday at 9:00 a.m.

CHAIRMAN DURAN: Could you have someone leave that message for me for both those meetings?

MR. ANAYA: Yes sir, Mr. Chairman.

CHAIRMAN DURAN: I think they have but—

COMMISSIONER SULLIVAN: Which meeting is the 5th? Is that the CARE Connection?

MR. ANAYA: Mr. Chairman, Commissioner Sullivan, the Chairman asked to have a meeting to review the DWI program budget to see where things are going in more detail, so we will be doing that.

CHAIRMAN DURAN: That's on the 5th?

MR. ANAYA: Mr. Chairman, yes, a week from this coming Friday.

COMMISSIONER SULLIVAN: And what's the other? Is one of these a meeting regarding the proposed assessment facility?

2088503

SFC CLERK RECORDING 08/17/2004

CHAIRMAN DURAN: Yes, that's the other one.

MR. ANAYA: Mr. Chairman, yes, that's the one we would like to get a date from you today on, which would be workable for the entire Commission, for a work-study on the CARE Connection project as a whole.

CHAIRMAN DURAN: Shall we do it now?

COMMISSIONER TRUJILLO: Are they ready to do it now?

COMMISSIONER SULLIVAN: No. Pick a date.

CHAIRMAN DURAN: What day's good?

COMMISSIONER TRUJILLO: Not next week, probably. The following week? That would be good for me. Because we have a regular meeting next week, right? On Tuesday. How about the following week?

CHAIRMAN DURAN: Can't we have just like a half an hour, because I think it would be nice to have the entire Commission involved in that discussion, because it's kind of a policy decision that we have to make. Can't we have it at the next meeting?

MR. ANAYA: Mr. Chairman, if that's what you'd like to do, we can do that. You had specific questions on the site and the CARE Connection as well as staff has been preparing a proposal for you on that particular issue. I know that you had some discussion with some of the other staff as well. But we could do that if you'd like.

COMMISSIONER TRUJILLO: Is half an hour enough time to give us a realistic representation?

MR. ANAYA: Mr. Chairman, Commissioner Trujillo, I would suggest at least an hour.

CHAIRMAN DURAN: Do you want to just have a special meeting? The issue is whether or not the assessment facility should be built out at State Road 14 or should we try to find a place here in town that could possibly better serve the community. And we need to make a decision relatively soon because we're using some grant money for that, right? And there seems to be some—some people want to have it, feel comfortable with it being out there and some feel it should be in town. And so I'd just like to have some discussion about that before we make a decision about where we're going to expend those funds.

So could you attend if we had it here at another date? So what day works?

COMMISSIONER TRUJILLO: Do you want to do it next week?

CHAIRMAN DURAN: I don't think—can't we just do it at the meeting, rather than set up another meeting.

COMMISSIONER CAMPOS: I think I'd rather do it at a special meeting. I think there's going to be a lot to discuss. I've gotten some calls about a number of issues.

CHAIRMAN DURAN: Okay.

MR. LOPEZ: Mr. Chairman, might I suggest that, first of all, I'd like to clear up a little bit of confusion. Robert, you mentioned a meeting on the 5th? That's two weeks from yesterday. Is that correct?

MR. ANAYA: Mr. Chairman, Mr. Lopez, it's whatever the day—I don't have my calendar out at the moment but it's a week from this Friday at 9:00 a.m.

MR. LOPEZ: Okay, that is the 1st. March 1st. That's to discuss the DWI. So I would suggest perhaps, or throw out an option that for a work session that it be done on the 5th, which is a Tuesday. Would that work for the Commission?

COMMISSIONER SULLIVAN: Why don't we do it on March 1st at 10:00 a.m.

MR. LOPEZ: Oh, excuse me. That is election day. So March 1st?

CHAIRMAN DURAN: That's fine with me.

COMMISSIONER SULLIVAN: Do them all at once.

CHAIRMAN DURAN: You have to publish it, if all of us show up. You have to let the community know that we're going to have a quorum.

COMMISSIONER TRUJILLO: March 1st is on a Friday, right?

CHAIRMAN DURAN: Right. Ten o'clock?

COMMISSIONER SULLIVAN: Nine o'clock is going to be the DWI program, right?

MR. ANAYA: Mr. Chairman, Commissioner Sullivan, yes. Nine o'clock DWI overview and—

COMMISSIONER SULLIVAN: The County Manager just changed what he had said before.

CHAIRMAN DURAN: Okay, so 9:00 is DWI and 10:00 is the assessment. Does that work for everybody? Okay.

MR. LOPEZ: Mr. Chairman, one final clarification. Relative to the DWI assessment, should that be part of the notice meeting? Will there be a quorum at that meeting? At 9:00? So we could just notice a meeting beginning at 9:00.

CHAIRMAN DURAN: Why don't you just in case.

MR. LOPEZ: We'll do that.

CHAIRMAN DURAN: Okay. Any other questions of Robert of Steve? Thank you, Robert.

VIII. PRESENTATIONS AND AWARDS

A. Presentation of proposed revisions to the land use assumptions and Capital Improvement Plan for consideration by Board of County Commission as required by State Developmental Fee Act and Santa Fe County Ordinance 1995-04

STAN HOLDEN (Fire Chief): Mr. Chairman, members of the Commission, we're officially presenting the two documents, the Capital Improvement Plan and the land use assumption revisions to the Commission for their consideration at a public hearing at the next scheduled BCC meeting, which is the 26th of February. The

Developmental Fee Act requires that the Commission conduct a periodic review of the land use assumptions and Capital Improvement Plan and I'm sure that because of the scope of the project that there may be many questions that the Commission may want to entertain in regards to those two documents, so we wanted to give the Commission plenty of time to review it prior to the scheduled public hearing on the 26th.

It is not my intent to engage in any discussion or have any presentations done officially today to the Commission, but I would stand to answer any questions that members of the Commission might have regarding those two documents.

COMMISSIONER TRUJILLO: Stan, does this link to the impact fees that are in place?

CHIEF HOLDEN: Mr. Chairman, yes. These two documents, the Capital Improvement Plan and the land use assumptions are two of the critical documents that allow us to collect the impact fees throughout Santa Fe County. And these documents are two documents that are required by the Developmental Fee Act for the County to periodically review and update and if necessary revise if the Commission at some point wanted to make any changes to the impact fee, whether it would be to lower the fee, to increase the fee or to do away with the fee. This is the process by which the Commission can do that.

COMMISSIONER TRUJILLO: Thank you, Stan.

COMMISSIONER SULLIVAN: Stan, at this point, I don't see in this document any impact fee change recommendations. Is that where you are now?

CHIEF HOLDEN: Mr. Chairman, Commissioner Sullivan, we are awaiting the final recommendation from the advisory committee which the Commission reappointed in the year 2000 specifically for this project. The act requires that this committee have that recommendation to you five days prior to the public hearing. So they have a couple of days yet to have it finalized. The chairman of that committee, Mr. Larragoite, will have the written documentation to you, which will, I hope, answer the Commission's questions about what the advisory committee is going to recommend to the Commission.

COMMISSIONER SULLIVAN: The only question that I had, Stan, was on page 8, where you discuss the need for vehicles and stations in the area. And you talk about two new fire stations being needed in La Cienega. I don't see any indication of the need for a fire station anywhere in the Community College District, and we had talked about that before and I recall your saying that one was in the planning stage.

CHIEF HOLDEN: Mr. Chairman, Commissioner Sullivan, you're correct, but the Community College District is the La Cienega Fire District. And we already have it in our current plan to build a substation in the Rancho Viejo area.

COMMISSIONER SULLIVAN: Okay, so when you say "are needed in La Cienega" you mean the La Cienega Fire District?

CHIEF HOLDEN: Yes sir.

COMMISSIONER SULLIVAN: So that would—where would the other one be?

CHIEF HOLDEN: Mr. Chairman, one of the things about this plan is that it does not specify where the facilities are to be built. What it does is it gives the Commission numbers to base the projections on secondary to growth that the Southwest Planning consultant has decided that based on these numbers and the growth in the area, this is what should be required. We already had discussions with Southwest Planning that even though the numbers may show that we need an additional substation some place, that unless we have the density in that area we're not necessarily going to construct a station just because there is growth in one area.

In fact, to make it simpler for you, if we already have a station in existence, we may increase the size of that station but we wouldn't need to build a new station right across the street from it. That doesn't make sense. Just because the numbers in that area have grown. So we might make accommodations for the growth in other ways rather than building a new station.

COMMISSIONER SULLIVAN: But you feel that in the Rancho Viejo area one is ultimately coming.

CHIEF HOLDEN: Absolutely.

COMMISSIONER SULLIVAN: Thank you.

COMMISSIONER TRUJILLO: Stan, the present formula I guess is 27 cents a square foot in impact fees that we charge as part of the building permit process, right?

CHIEF HOLDEN: Mr. Chairman, Commissioner Trujillo, actually, the cost per square foot is based on the occupancy of the structure, whether or not it's a residential structure or it's a commercial structure and what the NFTA classification is. So the higher the risk of fire within the building, the higher the impact fee is per square foot.

COMMISSIONER TRUJILLO: Up to what? What is the maximum? I think it's 27 cents, right? A square foot.

CHIEF HOLDEN: I think the Commission capped it at 27 cents, 27½.

COMMISSIONER TRUJILLO: Can you give us some information, Stan, on what we're generating by district in impact fees and what they're being used for?

CHIEF HOLDEN: Mr. Chairman, Commissioner Trujillo, we have that prepared for you for presentation on the 26th, the meeting of the 26th. We have documents prepared that will show you how much we've collected since the inception of the Impact Fee Ordinance, what the money's been spent on and what the future projections are for the need for additional funds and what they will be spent on.

COMMISSIONER TRUJILLO: Thank you.

CHAIRMAN DURAN: Stan, does this money go right into the general fund?

CHIEF HOLDEN: Mr. Chairman, the money is collected and goes into a specific fund where it is reserved until the Commission takes specific action through a budget adjustment request for each individual item. So it does not go into a specific line item that we can spend without Commission approval. Each item that we spend money on

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specific to impact fees comes back to the Commission. The Commission takes specific action to approve that purchase. I can tell you that the impact fees are collected by fire district and they must be spent within that fire district.

CHAIRMAN DURAN: Don't you think it would be more appropriate for the money to just go straight into the general fund? Can you check into that? I kind of think that the money should just go straight into the general fund and then, because the Fire Department comes before us for budget, to review the budget and approve your budget anyway, right?

CHIEF HOLDEN: Certainly.

CHAIRMAN DURAN: You don't know off the top of your head—do you know approximately how much money we generated last year?

CHIEF HOLDEN: Well, on a yearly basis we generate about \$1 million a year in impact fees. I thought Katherine was here. She might be able to answer the question on why it was originally set up as it was. I don't think there's any restrictions in the Developmental Fee Act or in the ordinance that would prevent the money from going directly into the general fund. I'm not sure how that—I can find out for you.

CHAIRMAN DURAN: Can you answer that, Katherine?

COMMISSIONER TRUJILLO: Stan, isn't it true that the monies are segregated and can only be spent where they're generated, so we have to keep track of the monies that way?

CHIEF HOLDEN: Mr. Chairman, Commissioner Trujillo, yes. The Developmental Fee Act and the Santa Fe County ordinance both require that the money be spent, collected and spent within the individual fire district for specific impacts secondary to growth for fire and rescue services. The money can't be spent on other items.

CHAIRMAN DURAN: Okay, then never mind. That answers.

COMMISSIONER TRUJILLO: Or in other districts.

CHIEF HOLDEN: Or other districts.

CHAIRMAN DURAN: So the impact fee is specific for private property and fire protection.

CHIEF HOLDEN: Yes sir.

CHAIRMAN DURAN: Okay. Good. Any questions of Stan? Thank you, Stan.

IX. ADMINISTRATIVE ITEMS

A. Committee appointments

1. Appointment to the Lodgers' Tax Advisory Board

MR. LOPEZ: I'm not sure exactly who prepared this, Mr. Chairman, but the memo is in your packet and we're recommending that the Commission appoint Mr. Alfred Matter for the current vacancy on the Lodgers' Tax Advisory Board.

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CHAIRMAN DURAN: Any questions of Estevan or Katherine?
KATHERINE MILLER (Finance Director): I can help on this.
CHAIRMAN DURAN: What's the pleasure of the Board?
COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman, of Mr. Alfred Matter to be appointed to the Lodgers' Tax Advisory Board.
COMMISSIONER GONZALES: Second.
CHAIRMAN DURAN: Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.
Good work, Katherine.

X. STAFF AND ELECTED OFFICIALS' ITEMS

A. Community & Health Development Department

1. Presentation of affordable housing regulations

MR. ANAYA: Mr. Chairman, Commissioners, pursuant to the requirements set forth in the Community College District Ordinance, Santa Fe County staff, the Attorney's Office, Land Use Office, County Manager, have had discussions and developed the affordable housing regulations that you see before you. The regulations that you see behind the memo dated May 11, 2001, were posted in the County Clerk's Office pursuant to the requirements set forth in the Community College District and have been in effect subsequent to 15 days after posting.

I would like to draw your attention to the power point presentation in the back of your packet to give a brief overview of the requirements set forth.

CHAIRMAN DURAN: Robert, I have a quick question. Why aren't these regulations going to be applicable across the board in the county? Is it specific just for the Community College District?

MR. ANAYA: Mr. Chairman, Commissioners, there was a specific requirement in the Community College District Ordinance that said we would draft specific regulations for the Community College District. We in fact intend on utilizing these same regulations for our current Affordable Housing Ordinance that we have that's separate from the Community College District so we'd like to create one final packet of regulations and utilize it for all developments that affected by affordable housing but for purposes of this document it was specifically noted by the ordinance that they had to be developed for the ordinance.

CHAIRMAN DURAN: Okay. Thank you.

MR. ANAYA: Mr. Chairman Commissioners, if you go to the presentation that's in your book, some of the things that we're going to go over that are in the regulations are generally requirements, calculation of income, calculation of assets, gifts, homebuyer status, base price, process for certification and first refusal.

General requirements, 15 percent of the total units in each phase shall be deemed

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affordable. I should say 15 percent of the entire Rancho Viejo and/or Community College District shall be affordable units. The minimum house sizes are: one bedroom, 1000 square feet; two bedroom, 1300 square feet; three bedroom 1500 square feet.

Range one is 0-60 percent of the median income. Range two is 61 percent to 80 percent of the median income, and Range three is 81 percent to 100 percent of the median income. The developments have to have met the five percent requirement in each range.

CHAIRMAN DURAN: Excuse me, Robert, is there a minimum size lot requirement?

MR. ANAYA: Mr. Chairman, Commissioners, there is not a minimum size lot requirement.

CHAIRMAN DURAN: So they could, these affordable units could be constructed on all the smallest lots of the subdivision, right?

MR. ANAYA: Mr. Chairman, Commissioners, one of the requirements that we're going to have in the regulations and that we want to make very clear to the developers of the district is that they will have to go through a review process on new developments so the County staff will be able to look where they're proposing to place the affordable units to make sure that we don't have them clustered in one general area and to make sure that there's reasonable integration within the project.

CHAIRMAN DURAN: Okay. Because my concern is that we're just going to put all these affordable units on a highly dense piece of property and I'm not sure I would be in favor of that.

MR. ANAYA: Mr. Chairman, I would say that I agree with your statement and that the Commission has an opportunity to make amendments and recommendations to us as per what we require in these regulations.

CHAIRMAN DURAN: Okay. Because I think it's quality of life issues that we're trying to deal with right here and this is a good opportunity to put something good together.

MR. ANAYA: If you're moving down, you'll see affordable housing agreement must be submitted and approved by Santa Fe County staff. As we move forward with the regulations and through the development process, and prior to the start of future developments, the developer will have to present to us an affordable housing agreement that states that they understand the requirements of the regulations and list the specific requirements on units. And also provide us the location of where those units are to be placed.

If you'll look at the next slide you'll see the base price range. For the current year, for a two-bedroom unit, is \$88,733, and three-bedroom unit, \$98,537, and four-bedroom unit, \$106,347 to \$145,019. Range two, \$121,000 for a two-bedroom. Actually, I misspoke. Range two is \$121,000 for a two-bedroom, \$134,369 for a three-bedroom, and \$145,019 for a four-bedroom.

Range three, \$133,000 for a two-bedroom, \$147,805 for a three-bedroom, and \$159,520 for a four-bedroom.

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CHAIRMAN DURAN: Excuse me, Robert. How do these general requirements tie into the first page of general requirements where the minimum house sizes are stated. One-bedroom, 1000 square foot, two bedrooms, 1300 square feet and three bedroom 1500 square feet. Does that mean, on base price range one, two and three that the two-bedroom for \$88,000 in range one would be 1000 square feet, and the same in range two and three?

MR. ANAYA: Mr. Chairman, Commissioners, as the ordinance is currently written, yes that is the case.

CHAIRMAN DURAN: Why did you not say anything about one-bedroom then?

MR. ANAYA: Mr. Chairman, Commissioners, I don't believe we had a provision for one-bedroom units in the Community College District Ordinance but we can add a provision for one-bedroom units.

CHAIRMAN DURAN: Okay.

COMMISSIONER SULLIVAN: Mr. Chairman, while you're on that subject, and I don't want to get my subjects in to the end, Robert, but since we're on that subject. You don't have a minimum house size for a four-bedroom?

MR. ANAYA: Mr. Chairman, Commissioner Sullivan, I'd have to look back at the ordinance. I believe we do and I probably just did not place it in the packet but I believe we do have that in the ordinance.

CHAIRMAN DURAN: Would you rather I hold off all my questions to the end? I could do that.

MR. ANAYA: As I said earlier, five percent of each range must be accomplished within the ordinance. And the base price may be exceeded up \$2000 for possible homebuyer upgrades.

Calculation of income. All household income of persons over 18 years of age must be included. Copies of the two most recent tax returns with W-2s must be provided. Current pay-stubs must be provided. Current bank statements and copies of the actual loan application must be provided. These are documents that will provided to the County for review to see if they meet the requirements of the affordable housing regulation.

Calculation of assets, you'll see that I have a comment there that Mr. Loftin was actually going to present this piece. He was able to attend the last meeting and he is currently in Atlanta and was not able to be here today. But we've had various discussions on assets and what I would propose to recommend to the Commission is that we calculate, that we allow liquid assets after the purchase of the home to be \$10,000, because it gets real complicated when you start to factor in different variables of assets, so what I'm proposing to the Commission and staff is that we just have a cap of assets at \$10,000 after the purchase. So that if they have liquid assets in excess of \$100,000, let's say, or \$50,000, what I'm proposing is that they would have to put in those liquid assets—not retirement accounts or accounts for their future, but those liquid assets that would put the majority of those into the house and only carry forward \$10,000 of liquid assets after the

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purchase. I would just put that on the table for discussion.

COMMISSIONER GONZALES: Robert, what are you classifying as liquid assets? You can set up a retirement fund where you're in mutual funds that can be liquidated. You can have certificates of deposit that can be liquidated. Who's going to make that call what's liquid and what's not?

MR. ANAYA: Mr. Chairman, Commissioner Gonzales, we will have to have refined—and actually, there's a two-page list to respond to you that we utilize for the Housing Authority. What I would propose is that we list out which ones are eligible and which ones are not and differentiate the two. But anything based on a retirement account, PERA, mutual fund, 401K we would exclude those items and include those items that can liquefy easier, faster, if you will. I think a CD would be one that would be one that could be calculated. But I would leave it up to—

COMMISSIONER GONZALES: Is this part of a standard practice to have a calculation of assets? If you have a family that for whatever reason they've got, they're in jobs that don't pay them very well but yet, for whatever reason, through some inheritance were left some liquidity, is our goal to get people in housing who have low incomes that can't afford to pay the large payments that most houses require? Is that the goal? Which I think it is a goal. Or is to take a look at individuals' overall financial wealth and then based on that determine where they fit into this process?

MR. ANAYA: Mr. Chairman, Commissioner Gonzales, that's an excellent comment and question if you will and I think the best way that I could respond that is to say that if somebody has liquid assets that put them in a position where they could otherwise purchase a unit that wasn't deemed affordable, if you will, if they have liquid assets in excess of \$30,000, \$40,000, \$50,000 and they would be able to utilize that to buy down their cost of the home, are they truly affordable? That's a policy question and it's a difficult one but I guess you have to figure out what your target audience is.

COMMISSIONER GONZALES: So at what point do we address that policy issue? Now, in this effort?

MR. ANAYA: Mr. Chairman, Commissioner Gonzales, I would take staff of any specific recommendations from the Commission and/or staff and/or anyone else on this issue. It's a difficult issue to deal with.

COMMISSIONER GONZALES: And I know you want to move through this. It just seems that people find themselves in a number of situations when trying to buy a home. I'd hate for us to have so many barriers that are up or so many restrictions that we're preventing access. And I can understand what you're saying that if someone is holding on to even \$25,000 in liquid assets out there, but they're combined income is \$30,000 to \$35,000 a year, that liquid asset could either be set up for a college assistance program for their kids, it could be for rainy days or whatever it is, and if they're choice is to either buy a house and pay and lose some of that liquidity or to not buy a house and save some of that, then I fear that we maybe competing against ourselves in this effort.

So I would advocate that we look to the level of income and what people can

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support what type of housing they can support as opposed to seeing what other assets are available for them because I think that's an unfair situation or predicament to put people in.

CHAIRMAN DURAN: No, I agree. I think that if your grandfather or mother leave you \$25,000 and you have children, it helps you make sure that they go to college and if that's going to count against them qualifying for an affordable house, I don't think that's fair. Maybe what we could do is figure out some kind of formula, or would it be easier just to not consider liquid assets? How would you do that?

COMMISSIONER TRUJILLO: I think we need to consider liquid assets. I think we need to consider where the individual is at this point regarding his financial status. The question that I would have is the liquid asset, the maximum, is it a one-time deal at the time of acquisition? Or is it in perpetuity thereafter? Only at the time of acquisition of the affordable housing. After that the owner can make investments that can augment his portfolio if you will.

MR. ANAYA: Mr. Chairman, Commissioner Trujillo, that's correct. It's for qualification purposes to get the person in the house. And I agree with all the comments that have been made. I would just say that there is a need to have some cap, in my opinion. Otherwise, I think you open the door for potentially somebody that has \$100,000 of liquid assets, for example, that could easily utilize to get into a home that would get an affordable unit that somebody else that doesn't have \$100,000 in liquid assets couldn't even think of getting their home. So I agree with the comments. I would say that some cap somewhere should be considered to truly target those affordable people and affordable units.

CHAIRMAN DURAN: Well, what if you had a review committee? Someone that has in excess of x-amount of dollars in liquid assets, his situation could be reviewed by a committee that would then determine whether or not he would qualify.

MR. ANAYA: Mr. Chairman, can I give you an honest answer on that question? I would say that we would be happy to create a committee, but there's going to be a lot of units that come in for the County and whoever we contract with to review. Be happy to do a committee but we're trying to make the regulations as simple and as clean as possible, not only for the County's sake but also for the developer's sake as well. But if you'd like a committee, we will definitely do that if that's the direction.

CHAIRMAN DURAN: Sometimes life isn't just black or white. Sometimes you have to analyze each case on its own merits and I could see where somebody left their family \$50,000 and it's a liquid asset. Maybe they can't get to it or can only use it for a certain educational purpose but on the books it shows they have \$50,000, and that money is supposed to go into educate their kids. I would consider that as a liquid asset. I'm just trying to make sure that there's some mechanism in place for people that just don't meet the criteria across the board. They can go to this committee, have someone review it. Or just an appeal process. Maybe we don't need a committee. Maybe just some kind of appeal process.

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savings accounts that are classified as being liquid for the sake of homeownership when there is jobs that are paying them minimal salaries. So maybe we can find a common ground in there. But it seems like that would make some sense to have a place in this formula but I think that this would be the exception to the rule where we see people actually having this kind of money to actually put into it. But where it does take place, let's not develop a barrier just because they've been prudent in how they've saved their money and they're saving it for days when they may lose a job or may need it for health reasons.

Because a lot of people, maybe they're going into this market don't have health insurance. Who knows why they may be saving their money. So I just think we need to be flexible and really take a look at the situation. It's all tied to their level of income, what they're earning on an annual basis and what they're able to afford in terms of a house payment. I think that's why we're trying to help them.

COMMISSIONER TRUJILLO: Can we look at the situation on the basis of cash flow? Ostensibly, all liquid assets generate dividends, generate income, and rental properties generate income, coupled with your base salary, if you work. Can we take a look at it from that perspective? Like \$50,000 for a nest egg, send your kid to college, probably does not generate that much money in dividends, but still, that can be used for the purpose of sending that offspring, that child to college. Can we look at it from a cash flow perspective?

MR. ANAYA: Mr. Chairman, Commissioner Trujillo, yes we can. And we started to look, we've looked at that angle as well and what that comes down to is on those investments, what would be the value of them. There are several ways you could look at it. You could look at based on the Consumer Price Index, which really is relatively low and isn't representative of what somebody could make off those assets, or you could attribute a 5 percent or a 10 percent rate. But we can look into that as well.

And I would suggest to you, Mr. Chairman and the entire Commission the way the Community College District Ordinance was drafted was done in a way that the regulations are drafted by staff and published by staff, so I would propose that we go back to the drawing board on the asset issue, come up with a proposal based on the comments made here today and then meet with each of you to show you what we've come up with to see if we've hit the mark or not on moving forward with the asset piece.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: I would like to hear from Mr. Loftin. Maybe he can explain exactly why these are essential provisions for the qualification process. I think it's important that we gain that perspective because this is a big deal. It's going to be a big deal for a lot of people that want to buy a house for the first time. But I think they have to be truly qualified and meet those goals.

COMMISSIONER GONZALES: I agree.

MR. ANAYA: Mr. Chairman, Commissioners, gifts was the subject of a

lot of discussion as well, and what staff recommends is that gifts and money towards the purchase of a house shall be allowed, is our recommendation. However, the buyer must provide two percent of their own seasoned money towards the purchase of their home. This is a provision that gives you some flexibility to change if you would like but allows a buyer to have a gift given to them, but also creates a mechanism for the buyer to be responsible and come up with some of their own money as well towards the purchase of their home.

CHAIRMAN DURAN: And that's two percent of the purchase price?

MR. ANAYA: Mr. Chairman, Commissioners, yes.

COMMISSIONER TRUJILLO: How are we going to enforce this provision? How are we going to differentiate whether two percent was not a gift?

MR. ANAYA: Mr. Chairman, Commissioner Trujillo, in our current affordable housing program that we have right now, that we're working with Neighborhood Housing Services, we have a similar requirement to this and the buyer has to have documentation to show that two percent of that money is their money that they've earned and had. Whether that was from savings or from their tax return or some other mechanism that came from the actual buyer. It's relatively easy for us to see if it was seasoned or not by the amount of money that's on their bank statements and the term in which they've had it on their statement, and/or like I said, a tax—money they received from their tax return.

COMMISSIONER TRUJILLO: That is documented somewhere along the line.

MR. ANAYA: Mr. Chairman, Commissioner Trujillo, yes.

CHAIRMAN DURAN: Okay, Robert.

MR. ANAYA: Homebuyer status, the home purchased must be the buyer's primary residence. The buyer cannot own another residence. However, the buyer can own other property and one issue that we will need clarification from this body on is staff is proposing that the buyers be a first-time homebuyer. That was the subject of a lot of discussion, but that's a decision that—

COMMISSIONER TRUJILLO: A first-time homebuyer in the immediate area, or a first-time homebuyer going to Rio Rancho, buying a house because they can't afford to buy anything here and then trying to come back and purchase something in the immediate area so they can be within close proximity to family and to their culture?

MR. ANAYA: Mr. Chairman, Commissioner Trujillo, what we proposed was utilizing the IRS definition and I'll make sure that Steve Shepherd clarifies me if I mess up on this, but the recommendation is that it's the IRS definition which would be not owning a home within a period of three years, but having a provision that would allow for a displaced individual, somebody that has recently gone through a divorce, potentially, to be able to buy a unit. That those be some considerations given.

The developers at the Community College District brought that particular point up. They seemed to be okay with the first-time homebuyer issue. There are some people here

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today that might like to comment on that. But I put that on the table for discussion, Mr. Chairman, Commissioner Trujillo.

COMMISSIONER TRUJILLO: I would conjecture that this stipulation would have a disparate impact on those people that have had to move away from the area because they could not afford a house in the area and then want to come back because now it's affordable. So it would sort of alienate, if you will, that homebuyer.

MR. ANAYA: Mr. Chairman, Commissioner Trujillo, I think that's a valid comment and I would just tell you that one of the things that came up relative to this issue is somebody that's buying up, if you will, or buying another unit, are in a much better position financially once they sell their existing unit wherever it is, whether it's in Rio Rancho or here in Santa Fe. They have in hand the potential, after the sale of that property to be able to buy up more easily than a lot of people out there in this community that have never owned a home. But I would just say that—

COMMISSIONER TRUJILLO: That would be addressed in the other criteria, base pay, liquid assets and that. So they would fall in a different category than depending on other income. I don't agree with this first-time buyer deal.

CHAIRMAN DURAN: Why wouldn't, if it's affordable housing that we're trying to provide, what does it matter if I've owned a home before, I can still only afford one of these below-market houses? What's wrong with—I agree with Commissioner Trujillo. Why do we have to have a limit—what's driving this first homebuyer thing? What's the reason?

MR. ANAYA: Mr. Chairman, Commissioners, I'll make one comment and then leave the decision up to the Commission. One of the things that we're seeing right now, with the homes that we're purchasing, that we're actually building and selling through Neighborhood Housing Services, and one thing that Neighborhood Housing Services and Santa Fe Community Housing Services has been able to do in this community is provide an opportunity for a buyer to get in a house, not buy up from a house. I have no objection to people that buy up and have an opportunity to buy up, but there's a large population in this community that never get a chance to get in the first home. And that's my only reasoning. Staff has talked about this at length, but that's just my recommendation based on the number of people that don't ever have an opportunity to buy their first house in this community.

But I stand for the direction of the Commission. That's my recommendation as staff, but I see your points, they're valid points on buying up but there's a lot of people in this community that never get that first chance at buying that first home.

CHAIRMAN DURAN: And there's probably just as many people that can't afford anything more than just an affordable house.

MR. ANAYA: Mr. Chairman, that's a good point as well. Mr. Chairman, Commissioners, the base price that staff's recommending be included. We had a lot of discussion about formulas and how it is we derived at the prices that you do see in the Community College District Ordinance. We came up with those prices based on the

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discussions not only with our own internal staff but also discussions with the City of Santa Fe staff and how they came up with their base prices. What we propose to the Commission is that the base price be included based on the Consumer Price Index annually, and that we have a public hearing based on those prices based so that the public could comment as to whether those prices were realistic or unrealistic. That's the recommendation of staff.

COMMISSIONER TRUJILLO: Is that how you derived the ranges, the base pay on what you're proposing on the ordinance.

MR. ANAYA: Mr. Chairman, Commissioner Trujillo, we derived those from discussions with the City and looking at their affordable housing ordinance and also discussions with Neighborhood Housing Services and internal staff. That's how we initially came up with the base price.

COMMISSIONER TRUJILLO: Which are linked to the CPI?

MR. ANAYA: We did not link them to the CPI but we did look at the market in Santa Fe. We used the CPI as a possible tool for us to increase them in future years. We didn't necessarily link the two together.

COMMISSIONER GONZALES: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER GONZALES: What type of discussion did the property owners out in the Community College District where the majority of the housing is going to go up, what type of discussion did you have with them, in terms of everything from the qualifying of the buyers all the way to the issue of the base price. Because I'm assuming that you're saying that the base price is calculated based on whatever the average median income is in the area helps you target what the base price is going to be?

MR. ANAYA: The median income and the market itself.

COMMISSIONER GONZALES: And the market itself, so if the Community College District for a large part is driving a lot of the housing market per se if that's the area where the County has slated some of the growth to occur, a lot of it, has there been dialogue up there with the property owners in terms of what efforts they can bring to the table to achieving this objective, as opposed to us developing the regulations and then just saying here's what you have to do?

MR. ANAYA: Mr. Chairman, Commissioner Gonzales, over the course of the last year and a half, I would say as a good picture, we've had discussions with several of the property owners out at the Community College District. And the base price, for example, was something that we did have discussions with developers on. I think we can open that up even further if you would like and get more comment on that, but staff, myself standing here representing staff, do I feel comfortable that we've had good dialogue with the Community College District? Yes, we have. Can we do more? Sure. We'd be happy to expand that relative to the regulations and any other potential amendments that you may want to bring forth relative to the Community College District.

On the base price issue, I haven't received any written comments or verbal

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comments that were adverse to what we currently have in place, but I would stand to be corrected if there's someone in the room today or other written comments that need to be brought forward that we need to look at.

COMMISSIONER GONZALES: It just seems that land costs, infrastructure costs, and development patterns will all have something to do, eventually, when that lot is finally ready for a house to be built on it. And that's not a point that we necessarily control. We can control the zoning, we can control what the patterns of housing is going to look like but there's a lot of other things that need to happen on the front end, before the actual thing that's going to have to happen from the developer's side.

All I'm advocating for is that to get to this point where we're realistic about the need that we're actually going to get homes and products up for this price range I think that this needs to be something where there's a collaborative effort that's taking place between the regulators and the landowners and not something where we're necessarily going to create a set of rules and then expect that a land development pattern is going to follow that per se.

And I don't know if maybe that can happen. Maybe that would be the best way to go, but it just seems that it's better to work collaboratively than to try and establish something without that in place and hopefully we can accomplish more than what we're asking for by doing that. It's just a suggestion.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think that we need to have, Mr. Chairman, a base price and then we need to determine how we adjust those and I think we have two mechanisms. The base price of course is in the ordinance. And that was determined by the collaborative process. I believe the developers in the Community College District had a great deal to do with the development of that ordinance. So the base price is in the ordinance for all of these. So we have one process which is that in general, every year, we've been going back and I think we'll probably continue to do that and look at the ordinance each year.

So that if we're drastically—I was responding to your question, Commissioner Gonzales, so maybe we'll put it off until later. What I was suggesting is that maybe we have two processes in place that might be enough to address the question that you brought up, which is that there's always variables to put into these factors. We have a Community College District Ordinance which lays out basic prices. The landowners and the developers were involved intimately in developing that ordinance. So I'm certainly comfortable for the time being those prices are okay. But things may change.

Number one, if we have our process of amending this ordinance, which I think we are each year. That's one way we can go in and just blanketly—there's the ordinance here—blanketly go across these prices and say, Is that a good base price.

COMMISSIONER GONZALES: It probably be based on the market and things like that.

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COMMISSIONER SULLIVAN: It might be based on if the developers were to come in en masse and say the price of land has gone up \$20,000 a lot because your taxes have doubled, then we'd have a reasoning to adjust this beyond the Consumer Price Index. And then of course the second adjustment factor would be whatever index you want to put to it on a regular thing and I'm not sure, and I don't know, Robert, if the Consumer Price Index is the right index. In terms of building costs, there's probably other indexes like Means and so forth that more appropriately reflect building costs. And they go up and down, depending on the price of materials and lumber in the northwest and things of that nature.

So is this what the City uses? The CPI?

MR. ANAYA: Mr. Chairman, Commissioner Sullivan, no. The City has a rather complicated formula that they utilize for calculating the base price and what staff was trying to do is try to get to the same area without maybe it having it be as cumbersome as some of the calculations that I've seen. But you'd make a valid point and there are other mechanisms that we can look at to maybe make this a better tool and closer to actually what's going on within the market and the economy.

COMMISSIONER SULLIVAN: Because there may be reasons the Consumer Price Index goes up and then that may be a temporary inflationary move. If that happens, what we're doing is we're penalizing the affordable housing applicants, because their base price of affordable housing goes up disproportionately to the cost of what the actual construction costs might have been over that 12-month period. And those construction costs vary up and down, sometimes they even go negative over a period of a year if it's a real low year and they can't sell their products.

So I would just suggest looking at another index that's maybe the best one and maybe the easiest one and maybe the differences aren't that big anyway and so it's a fine one. I'm not sure. That would be the one suggestion. And the other would be just to look at things on an annual basis and look at these numbers and see if they make sense and if they don't, I'm certain we'll hear from the providers of the buildings. They'll be the first to come in and tell us why they don't make sense.

MR. ANAYA: Mr. Chairman, Commissioner Sullivan and Commissioner Gonzales, I think what we're after relative to the collaboration that you spoke to earlier with the developers who will actually built out this Community College District, I think has a lot to do with coming back to the table annually. And the base price, whatever mechanisms we do to come up with that, utilizing a public hearing and giving the public and the developers an opportunity to provide input, I think will bring us to the point we need to be as far as the actual price.

COMMISSIONER GONZALES: I think for maybe overall though is to create the best roadmap with the least barriers for the homeowner. And I know that governments tend to get caught up in bureaucracies because we know that it's important to protect lots of things whether it's whatever. And landowners may get caught up in their bottom lines and what they have to do and so somehow we need to focus on how we focus

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on making sure that everyday Santa Feans have access to a house that's not going to break their family or prevent them from enjoying a good quality of life.

So however this roadmap is developed, I guess my message is to you, and however this ordinance is done, let's keep those barriers low. Let's figure out how to solve the problems up front as opposed to try and figure out how to solve them when we're in it and it's kind of hard to do because we don't know how things are going to play out. I think Commissioner Sullivan's call for relooking at this is extremely prudent on an annual basis.

It makes sense. The market changes, the community changes in many respects. The economy changes and that's going to cause the market to change and so that does make some sense.

But in how we develop the road map from the standpoint of getting someone in the door and then actually getting them into a home, we need to make it as simple as possible for that Santa Fean out there who just wants to own a house, and not create a lot of red tape, not create a lot of bureaucracy, not let them worry about what they have to do on the back-end and what they have to do on the front-end. And that might be too simplistic, but I hope that we can come as close to that as possible. Because as you know, there are a lot of people out there who want access to homes and it's just some small issues out there that are preventing them from getting that, whether it's coming up with enough for a down payment, whether it's the fact that we haven't been able to supply the market enough to keep the house rates low enough so that people can actually access it, and there's a number of things out there.

That's not for them to solve, it's for us on our side to try and work through it as best we can. That's my two cents.

MR. ANAYA: Certification process. Upon review of the aforementioned certification material, the County shall provide certification or denial of the potential buyer within 15 days. The certification is required by the Community College District Ordinance, affordable housing regulations and affordable housing agreement must be included in the closing documents for each buyer. First refusal, if the buyer sells a unit within ten years, the unit must be made available to another qualified buyer or the buyer signs a soft subordinate mortgage for the difference between the appraised value and the sales price at the time of the initial purchase. When the buyer resells the home, the mortgage is repaid and the proceeds can be used to assist another buyer.

Mr. Chairman, Commissioners, taking into very careful consideration about what Commissioner Gonzales just brought up about trying not to make things complicated, all we're trying to address here, and based on discussions with the developers and staff once again, I think the most effective tool will not be a right of first refusal, it will be some sort of subordinate mortgage that we just attach to the buyer when they purchase the home, letting them know that there's an affordability period. The ten-year affordability period, that has come up as a result of discussions, not only with staff but also with the developers. But that's another issue that we request some direction on.

Recommendations: I would recommend to the Commission, based on the statements

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the Commission made when they actually approved the Community College District Ordinance, that they consider down the road increasing the percentage of affordable units in the Community College District, and I would also recommend that the Commission consider multi-family affordable housing for the Community College District. Multi-family is currently not in the ordinance, but in the regulations that the staff did on May 11th. What staff is recommending, what I'm recommending relative to the 15 percent is that multi-family not be counted towards the 15 percent, that the County Commission consider multi-family as an extra component of the Community College District, not an initial provision. And for clarification on that, when you initially adopted the Community College District Ordinance and made the 15 percent recommendation, it was for single family homebuyer units, not rental units. But I think it's important that the Commission look at multi-family affordable units including provisions within the Community College District Ordinance to accommodate that.

And if I could just in closing go back to a couple of the issues. The asset issue, we will develop and refine those regulations based on the recommendations you've made today, and I would say that on the issue of homebuyer, I would request some clear direction from the Commission on how it is you want to proceed with the first-time homebuyer issue. Commissioner Trujillo, Commissioner Duran, you made clear what your representation is on that. I would just like some clear direction on that issue so that we can finalize that aspect.

One thought, Mr. Chairman, if I could, on the first-time homebuyer issue that came up as I was standing here is one could theoretically market all of those units to people that aren't affordable housing buyers. They could do a marketing scheme around just hitting people that buy up, so I'm not objecting to the possibility that they might buy up and be part of the 15 percent. But I would say that if there could be some percentage that are first-time homebuyers that the Commission could consider instead of just wiping out the first-time homebuyer requirement. Maybe if a percentage would be first-time homebuyer and the balance could be buyers that are buying up. I would just offer that for your consideration.

COMMISSIONER TRUJILLO: Mr. Chairman, is the construction, under your recommendation, Robert, is the construction of multi-family affordable housing, is that an incentive for contractors or is it a requirement that is part of the ordinance or what is it?

MR. ANAYA: Mr. Chairman, Commissioner Trujillo, Mr. Steve Shepherd and I formerly worked at the State Housing Authority of New Mexico and worked on the tax credit program, which is the single largest program that produces multi-family affordable rental units in this country. Tierra Contenta has two multi-family affordable projects that have provided affordable housing in this community, but also they use—they being Tierra Contenta as a corporation—by being able to build onto those tax credit properties made the entire development more financially feasible and I'm incorrect. There's actually three developments of that kind.

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They are a mechanism to provide affordable housing but they are also a very effective mechanism for the private sector to help generate a credit that's worth a lot of money and actual good cash flows. So that's the reason that I think that those issues should be separate. Single-family houses, multi-family.

COMMISSIONER GONZALES: But is it, Mr. Chairman, and to that point, Robert, and I support what you're calling for because I think the greater amount of product that we have on the market the better it is for people to decide, and correct me if I'm wrong. Wouldn't a multi-family home, the cost of that be much less than a single-family home, right? So the thing that Commissioner Duran pointed out is probably more important than ever if we were to adopt this case because what multi-family housing can do is it can be really strong entry-level housing for young people, maybe newly-married, starting families or whatever it is. Just to get them into housing, maybe for a couple or three years as they build their credit or build their wealth. But then if we have another product line that's single-family housing that would still be able to participate in the program by maybe moving up and buying that home.

Maybe it's better if we took off the requirement of first-time homebuyers only and allow for that natural progression to take place if we're going to be offering multiple product lines out there for multi-family housing all the way to single-family housing. Would that make sense?

MR. ANAYA: Mr. Chairman, Commissioner Gonzales, I think that would be a good item of compromise to look at. I think that having product, the bottom line from my perspective is that having product within the price range that you're offering them in the Community College District just doesn't happen on its own within the community right now. So all things being said relative to first-time homebuyer or not, you either have product or you don't. And the Community College District will provide the product that's very limited when it is offered out there in the community.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think that can work, or be worked out, because a first time homebuyer, of course if he's in a rental unit is not buying a home. So he can be included as an affordable applicant and those homes can be categorized as affordable even though the individual is renting the way they are at Tierra Contenta. So I think that can be worked into the mesh. You may have to reconsider your base price levels for multi-family units because a two-bedroom price for a single-family home would be different than a two-bedroom multi-family unit, obviously.

So you may have to have some other base prices. Another thing that I would suggest in your basic principles part of the agreement to add to that May 11th regulation that you already have in place is that I think the lots that are purchased by non-profits or others for the construction of affordable housing shouldn't be included in the calculation of the 15 percent. Just for example, Habitat for Humanity or whoever might undertake that will require lots all over the city and outside the city and that's a great program and as that

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moves along, we want to support that.

But I think the intent, certainly of the 15 percent is that's developer-provided housing, lot and facility. So I think we'd want to make that clear as well.

MR. ANAYA: Mr. Chairman, Commissioner Sullivan, if I could just ask a point of clarification on that, because I think that's a real important issue that you bring up.

Understanding that the 15 percent requirement was agreed to for the Community College District and that the developers have put themselves in a position where they're doing their financial pro formas around that requirement, I would just say as a statement that we should encourage, as staff and the Commission when at all possible, collaboration and coordination with non-profits. Not taking anything away with what you said but just clarify that one of the ways that's most effective at building affordable housing is collaboration with those non-profit entities and I think more of that, if more of that occurs then we'll produce more affordable housing.

COMMISSIONER SULLIVAN: Right. But I don't think we want to take away from the 15 percent because I think we will take away from the total amount of affordable housing that's out there. Habitat for Humanity can only, has only so many volunteers. They can only build so many homes a year. And that's great. The more they can build the better. But the developer-provided homes add to that market. They add to that total product. So I don't think—I think it's fairly clear in the ordinance when we say 15 percent we mean that those are homes that are going to be provided by the developer because there's no—if the developer just sells the lot to somebody else then there's no financial participation in affordable housing by the developer. They're just selling a lot, making a profit, and moving on.

So we certainly want to encourage that wherever possible and that would come in in part of their marketing plan. But I think we want to be clear in the regs that that's in addition, so we're not subtracting one from the other. We're not deducting. We're hoping to add 15 percent to the affordable housing market, not 15 percent less what other people are already doing. So that would be my hope anyway.

The other item that I think is important that we don't mention is monitoring. I think we need to have a mechanism in the regs for periodic monitoring. And as I read your regs, all the documents are being provided to the staff and there's a pretty big burden on the staff to keep up with these documents and these certifications that the developer is providing. So I think we need to think about the monitoring issues, whether we have a quarterly report or whether we have an annual review or whether we have an outside review. I don't know what the mechanism might be but I just think as we get further into this affordable housing, not only in the Community College District but elsewhere that we should have a monitoring component that doesn't put too much of the burden on the staff because at some point in time you don't know what the developer is doing every minute and where they are in their sales process and so forth. So there needs to be that.

And the last comment was under audits. You talk about in Section 6, Santa Fe may randomly audit the complete files of the applicants that have been approved under the

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provisions of this regulation. But as I read the regulations, you keep the files. Is that not correct?

MR. ANAYA: Mr. Chairman, Commissioner Sullivan, Section 6, there may be some—other than the items that we asked for, there's going to be a file at the developer's shop, wherever that might be, and also within the County shop. And I think all we're trying to do there is have a check and a balance at some point to go, to be able to go back and say let me see these randomly selected five files and compare them with the documentation that we have in place to cover the monitoring concern that you have.

COMMISSIONER SULLIVAN: Correct me if I'm wrong. The applicant files are submitted by the developer to the County and then kept by the County, aren't they?

MR. ANAYA: Mr. Chairman, Commissioner Sullivan, we don't need the original copy, necessarily. We just need a copy. So I think they'll be maintained in both places.

COMMISSIONER SULLIVAN: Okay. I think perhaps it needs to be clearer who has the responsibility for maintaining those files. In other words, is that on the shoulders of the developer? Because after the developer finishes building out their subdivision, they're gone and what do we do then? Is there a procedure where they turn them over to the County or what? Or does the County keep them. Because again, as I see here, the certification process is done by the County based on information submitted by the developer to the County and then the County evaluates it and renders a determination no later than 15 days after receipt by mail of the request.

So if you require additional information you get it in. So you're compiling a file on this particular applicant. At the end of that period, when you render your determination, do you then turn the file back to the developer? Do you require the developer to keep the original file? Do you want the original? If as you say you only want the copy, then I think we need to be pretty clear that the developer needs to keep the originals and then you have that right to audit them. I just don't think it's clear in here where the responsibility for the basic file maintenance is.

MR. ANAYA: Mr. Chairman, Commissioner Sullivan, I would strongly advocate that both parties be responsible for maintaining their files. The documentation that they send us and that we both have a responsibility of maintaining the files. That way we have a check and a balance. And I will clarify that.

COMMISSIONER SULLIVAN: I would say that they keep the files and they're made available during regular business hours to the County during the period that the applicant owns the home or whatever period you want to specify. Just so that it's clear, that they don't say, Well, I gave all that information to you, and you've got all that information. Well, things happen to County information, too. Boxes get moved around and employees change and so it probably is a good idea to have duplicate files. Those, Mr. Chairman, were just some of the thoughts that I had on it.

CHAIRMAN DURAN: Okay, Robert, so you're going to revamp this

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whole thing and come back to us?

MR. ANAYA: Mr. Chairman, Commissioners, would you like me to come back with the entire Commission or would you like me to make these changes and go over with them with the Commissioners individually and then move the regulations forward? The developers in the district would like us to finalize the regs as soon as we can so that we can get on with certifying those buyers and moving forward with the 15 percent.

CHAIRMAN DURAN: Well, I'd actually like to hear what some of the—if there's anyone out there, a representative from Rancho Viejo out there that might want to comment on the presentation and the proposal that's here in front of us to consider. I'd like to have some input from you.

BOB TAUNTON: Mr. Chairman, members of the Commission, my name is Bob Taunton. I'm general manager for Rancho Viejo. I have a couple of comments. I don't want to spend too much time on going over the presentation. As Robert said, we are anxious to get the regulations sorted out, particularly the side where how do you qualify a buyer, which has been one of the difficulties we've had for several years. Just a general comment on the location of where affordable product would be.

I think it's wise to remember that in the College District plan there is an element in the village planning is the creation of centers. And the reason for that is so you had a walkable community, opportunities for transit, proper locations for community facilities. And one of the things that can really help buyers of homes is if they do not need two cars. If you talk to people who are involved in affordable housing throughout the country, if you can do anything to eliminate that cost, which is about \$7,000 after tax. That's generally the number that's used, it's ideal as far as helping purchasers acquire a home.

So I would encourage you not to be looking at too dispersed a situation. It makes sense to have housing of this type that's in the proper location in the centers of the village.

I don't believe there actually is in the ordinance a size for a four-bedroom home. I believe it just goes up to three bedrooms. I can tell you from our experience there isn't a large demand for a four-bedroom. Often thought people will look for a three-bedroom plus a den situation that they might be able to convert later but rather than having a formal four-bedroom they choose a smaller bedroom count.

On the general requirements on the prices, when the ordinance was prepared in late 2000, I believe that the affordable housing portion of it came out probably October, November of 2000, just as the ordinance was being reviewed by the various bodies. We talked to Robert about how the base price calculations were made and he indicated that they were done, as he described today, through an analysis involving the City and looking at product and so on. One thing I'd like to point out is it's almost a year and a half later. Those prices haven't changed. We're still operating with the same base prices that we had in that period and it might be worthwhile, whatever the index is that you want to review the prices by, we might want to reconsider that and look at a little retroactive adjustment there.

A suggestion might be as far as in index, might be using the HUD income figures.

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If you're trying to match the capability of the buyer rather than the Consumer Price Index, if you were to look at the HUD index. Those are published every year and typically go up a percent or two and Robert certainly get that information.

The calculation of income, I have no comments on that. The issue of assets, no real comment on that other than I think the arguments or the discussion that took place was very valuable and it would be worthwhile to take into consideration those points. One thing that we see a great deal in Rancho Viejo is that we have quite a few single women, middle-aged women who are probably divorced buying our smallest houses. We wouldn't want—and I'm not saying this from a marketing standpoint, but I think we would like to make sure that that opportunity is out there. I think most people who are familiar with divorce cases will say that many women end up with just destroyed credit if not bankruptcy as a result of divorce, and they may have owned a house previously. So I think there's more than the first-time buyer here as has been discussed. It should be talked about.

One thing that we ran into in working with Neighborhood Housing Services a couple of years ago, and the ordinance is silent on this, but Neighborhood Housing Services seemed to have a regulation. Is there any requirement for status as permanent resident in the United States? Is it possible that someone could go into one of these houses, be certified, and yet not have permanent status. We actually had some folks from Asia that were on contract here for a period of time. They were kicked out of the program by Neighborhood Housing Services because they did not have a permanent work visa. And at one time in my life I was in that situation. When I moved from Canada I did not have a green card. I had an inter-company transfer, and L-1 visa that would lapse after a period of time and of course, because I wasn't in a first-time homebuyer program of any kind, I was able to buy a house on a conventional mortgage.

I disagree with Commissioner Sullivan's comments about Habitat and I want to tell you why. Last June we held a seminar that involved some of the County staff, Jack and Judy, Ann Condon, who was the Planning Director at the City at that time, representatives from Santa Fe Housing Trust, Habitat for Humanity. We were trying to understand as a developer how we could go about meeting these various income guidelines: 0 to 60, 61 to 80, 81 to 100. We believe that as a development company we could probably handle quite easily the 81 to 100 percent median.

The Housing Trust, their clientele is typically 65 to 70 percent. Mike Loftin and I talked yesterday and he indicated he wasn't going to be here and he confirmed that is their customer. That is the people that they deal with. Below 60 percent, the Housing Trust cannot deal with those buyers because of the income difficulties. It does not match with the program. The only game in town for us to hit is 0 to 60 is Habitat. For us to produce a house to meet that price point is absolutely a loss. It's not a question of a loss, it's how big a loss is it going to be? I have had several meetings with Habitat. In fact I had a meeting scheduled today at 4:00 which I postponed because of this item being on the agenda.

We spoke last time about, okay, how can we structure our deal, because we want to

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do that in our upcoming phase of Windmill Ridge. They essentially need to get the land for free and then have the developer contribute to the cost of the houses. That's really the financing that they have. They don't have a large bank account some place and huge sponsorship donations. They are struggling to do what they do. And they're the only game in town that can deal with a buyer that is under 60 percent. Typically their buyers are at about 30 to 35 percent median income. These are folks that have very low income, turn out to be wonderful residents in a community because they're so invested in owning a house. Their biggest concern is Can I give it to my kids because they have no interest in selling. They want to be able to will it to their kids; it's their lost opportunity to own a house.

So I disagree with Commissioner Sullivan. I think that it would make the program unworkable to eliminate Habitat, for example, out of the equation, because I have no idea how I would provide zero to 60. And believe me, it's not my intention to get into a social program as part of our operation. We need to team up with a recognized non-profit that has a track record, that knows how to do and by doing what Commissioner Sullivan is suggesting would just handicap the entire program.

Certification process, the only thing I might mention is under New Mexico real estate law, we're required to keep originals of contracts for a period of time whether the deal cancels or whether it actually closes. So we need to keep the original documents for the real estate commission to audit. I think it's three years. Maybe the broker that happens to be on the Commission here might be able to remember his rules and regs class, but I can't remember. Perhaps Commissioner Duran can mention that.

On the first refusal, I think the second option about a subordinate mortgage makes more sense. I spoke with Mike Loftin yesterday about that and that would be his view as well. And I'm sure that would be workable.

Increasing the percentage of affordable housing in the College District. Yes, in the future I think that's a great idea. But let's get this thing working now with what the situation is. Let's not burden this to such an extent that we don't have a success. We need to have a successful program out there, not just delivering the houses but also getting the right buyers. It's my understanding that a townhouse on a fee simple lot, in other words an attached product is a qualifying house under the ordinance. Obviously, if you had a condominium situation that wouldn't fit. So I think there already is an opportunity for attached product which would help meet some of the price points. Perhaps Robert could correct me on that.

And that's really all I have. We're anxious to have the regulations in place so that we can do both ends. We have done about 56 houses out there that have met various ordinances in terms of base prices and sizes but I can't say we have many qualified buyers because we had no process. And those of us that have real estate licenses, we've got, we're presumed to know what the process is in order to avoid any discrimination. We can't put people into a process that we don't understand, have them become unhappy with it. Or limit their buying opportunity based on what we think is happening, not really what

the regulations are. So if there's any questions I'd be glad to answer them.

COMMISSIONER GONZALES: Mr. Chairman, Mr. Taunton, other than what you just talked about, are there barriers, existing barriers on your side that you see that prevents more access or more delivery of the product that we're trying to target here for Santa Feans. From the development perspective?

MR. TAUNTON: Well, I don't think so. I think we can produce what we need to produce. Our company doesn't feel there are any barriers other than what I mentioned about Habitat, where you've got—how do you deal with the customer that's at that income level and the education and so on that's necessary. That's an important consideration in what we're able to do. In the other two categories, above 60 percent, I'm pretty comfortable that we can work out arrangements to work with one of the housing trusts in one or both of those categories. But it's the lower category that really is problematic.

COMMISSIONER GONZALES: Thank you.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Just two comments. I think that when you team up a housing trust or some organization like that, like Neighborhood Housing Services, they're perfectly capable of handling applicants in any of the price ranges. So I think that the issue boils down to money and I think in the 60 and lower percent bracket it's very possible that the developer is going to only break even or perhaps even lose a little money. But I think that's the price of the total housing packet and of the incentives that the County gives to that developer to make a part of that, to be a part of that process. So I think we're not eliminating, in fact we'd be encouraging entities such as any non-profit, Habitat, any non-profit.

So I think that's a little bit of—I understand that they wouldn't want to be involved in that because it's not profitable but I think that's a part of the total overall commitment that you agree to when you get involved in an area that has affordable housing requirements. And in terms of moving forward, I just want to be clear what Robert said at the beginning of the presentation and that is that these regulations were promulgated back in May and certainly it would have been useful to move the affordable housing program along if any of the developers has any problems with them that they were bringing forward before a nine-month hiatus. But having reached this point I hope we can move forward very quickly and catch up on the deficit in the affordable housing out in the Community College.

CHAIRMAN DURAN: What do you want from us, Robert? Do you want some direction?

MR. ANAYA: Mr. Chairman, I have five points that I would like to go over to make sure that I have clear direction. Based on the discussion that's been had today, I'm hearing that the first-time homebuyer provision is to be taken out, that we are to bring back the asset issue for further review. Can the 15 percent include participation from

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non-profits or not—it's the point that Commissioner Sullivan brings up? And just to respond to Mr. Taunton, 15 percent requirement does include attached as well and that is included in the ordinance, and I would just ask for your direction on square footage. Four bedroom—would you like me to bring back a recommendation on square footage on four-bedroom, but I guess one at a time—

COMMISSIONER SULLIVAN: Robert, that's already—Mr. Chairman, I hate to butt in but your power point chart is in error. The four-bedroom is already in the ordinance. The ordinance, at least the one I have, starts with three-bedroom at 1000 square foot. It starts at two-bedroom, correction, at 1000, and a three-bedroom goes to 1300 and four-bedroom is 1500. So that tracks with what you said before which is there is no one-bedroom provision. So I think that answers your last question. I don't think you need a four-bedroom square footage because it's already in the ordinance.

MR. ANAYA: Mr. Chairman, Commissioner Sullivan, I apologize for that. One bedroom? Would you like a one-bedroom number? But if I could get direction one by one that would be real helpful to staff. First-time homebuyer, out? Is that the direction of the Commission?

COMMISSIONER TRUJILLO: I think so.

COMMISSIONER SULLIVAN: I don't agree. I think there are some benefits of first-time, of limiting it at least on a trial run here to the first-time homebuyers. I think we've got a pent up demand and I think that addresses the local Santa Feans as well. They're most likely to be a first-time homebuyer as opposed to someone who may be moving from somewhere else. Now that doesn't answer Commissioner Trujillo's problem of someone who had to move to Albuquerque, to Rio Rancho. I understand that. But on the main, I think the first-time homebuyer does fit the need that we have right here now in Santa Fe. So my recommendation would be to stay with that, see how the numbers start to come in and see how the demand starts to come in. And then if we see that that's an impediment, then we can certainly change it. That's just—

CHAIRMAN DURAN: When this becomes an action item, why don't you give us the choice then to vote either for or against.

MR. ANAYA: Mr. Chairman, with all due respect, I would request that this be made in the form of a motion so that I don't go do something that isn't the direction of the Commission.

CHAIRMAN DURAN: Is this an action item? Can we take a vote on this?

CHRIS GRAESER (Deputy County Attorney): Mr. Chairman, it's listed as a presentation. You could certainly make a motion and take a vote on behalf of the Commission to give Robert direction.

CHAIRMAN DURAN: Okay, well, let's do that now then.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: A question for Mr. Anaya. On first-time buyer, what is Mr. Loftin's position? Does he have a recommendation?

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MR. ANAYA: Mr. Chairman, Commissioner Campos, Mr. Loftin feels the same way that I felt relative to the homebuyer issue.

COMMISSIONER CAMPOS: Go with the first-time homebuyer only? That's his suggestion?

MR. ANAYA: Mr. Chairman, Commissioner Campos, that's Mr. Loftin's position as well. Being, I would put this caveat. Being an affordable housing advocate and being that most of his buyers are first-time homebuyers, that would be his position, yes.

CHAIRMAN DURAN: Well, it looks like we disagree with him.

COMMISSIONER GONZALES: I think we should go the route that's been proposed, that as the ordinance comes forward that the option is put in there so that we can, as Commissioner Campos would like, have Mr. Loftin present to ask more questions on it. It would come back in the matter of first-time, or we could—I guess the thing to do would be to write it with the first-time homebuyer in the ordinance and then—

CHAIRMAN DURAN: What was that?

COMMISSIONER GONZALES: I guess what we could do go the route that Robert already has it where you put the first-time homebuyer, a requirement that it would be a first-time homebuyer and then at the time, when we're considering the ordinance, we can, if someone wants to make a motion to strike it, they can strike it after they hear or concur with what Mr. Loftin says. If you're looking for direction that might be the easiest way to do it. Don't you agree? He's got an ordinance or he's working on an ordinance that requires a first-time homebuyer in place.

MR. ANAYA: Mr. Chairman, Commissioners, if I could just offer that I'm not completely hung up that it absolutely has to be first-time homebuyer. I would suggest that a percentage, for a trial run of at least half being first-time homebuyer and half not being would give us an opportunity to get some data, to get some information to maybe come back and really make a better decision after we've had the regulations in place. That way we don't have to come back, that way we could finalize the regulations and get them to the developers.

The one comment that Mr. Taunton made, and I haven't spoken with every developer on this issue, but I have spoken with Mr. Taunton and Mr. Pino, the first-time homebuyer wasn't a huge issue as much as having the latitude to be able to offer a unit to somebody like he mentioned in the scenario of being displaced through being divorced. But I would suggest that maybe 50 percent first-time homebuyer, 50 percent open would be a compromise that would give us an opportunity to get more data.

CHAIRMAN DURAN: Well, why don't you do what Commissioner Gonzales said and bring it forward with the homebuyer requirement and then give us some options based on the concern that we have, and the fact that there might some of it that was a first-time homebuyer and is now displaced or has some extenuating circumstance that should be considered in making a decision whether or not they would qualify.

MR. ANAYA: Mr. Chairman, Commissioners, would you like me to

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finalize the regulations in that fashion that you just suggested, put them on the street and start working with the regulations? Or would you like us to bring all the regulations back to the Commission one more time?

COMMISSIONER TRUJILLO: Bring them back. It'd be good to see them again.

COMMISSIONER GONZALES: Well, I was going to say, I don't know if it necessarily hurts to put them out on the street for comment so that when we actually, when they are brought back, we're not going to have people coming forward saying, hey, we never got a chance to see this. That's the only thing I would say. And then after it's been made public then we can debate the issues and allow for public comment based on what's been sent out and maybe make some changes at that time.

CHAIRMAN DURAN: So how about in 30 days?

MR. ANAYA: Mr. Chairman, that's fine with me.

CHAIRMAN DURAN: And then bring it back to us in 30 days with those ideas.

MR. ANAYA: Okay. Thank you, Mr. Chairman.

COMMISSIONER TRUJILLO: At that time, are we going to open it up for public hearing? Because I understand that simultaneously they're going to go out the public so that they can review and incubate the thought process and come forth through a public process. Is that going to happen?

MR. ANAYA: Mr. Chairman, Commissioner Trujillo, the way you drafted the Community College District Ordinance gave staff the flexibility to actually do the regulations without coming to the Commission. But we came back to the Commission because there are some sticking points. There's a 15-day publish period. If we make adjustments to the ones that were approved on 5-11, we'll publish those and then if you'd like public comment as well. I don't think that would be a problem. Mr. Graeser, do think that's fine for them to have public comment as part of the proposed regulation?

MR. GRAESER: Absolutely, Mr. Chairman. We should even notify it as a public hearing.

CHAIRMAN DURAN: I think this is a policy decision that should be made by the Commission, not by staff.

MR. ANAYA: Mr. Chairman, that's why we came back because we felt it was.

COMMISSIONER CAMPOS: Question.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: Mr. Anaya, Mr. Taunton raised the issue about the 15 percent and he felt that Rancho Viejo should not be required to do the full 15 percent. Did I understand that correctly?

CHAIRMAN DURAN: When did he say that?

COMMISSIONER CAMPOS: I'm asking, did I understand that correctly?

MR. ANAYA: Mr. Chairman, Commissioner Campos, no. I believe that

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Rancho Viejo as well as all of the developers that work in the Community College District have agreed to do the 15 percent as they're required.

COMMISSIONER CAMPOS: And that's in conjunction with groups like Habitat?

MR. ANAYA: Mr. Chairman, Commissioner Campos, I think that's a policy decision that the body is going to have to make as to whether or not you want to allow partnerships with non-profits or not.

COMMISSIONER CAMPOS: Well, I'd like to get more of the background when this issue was negotiated initially and see if they actually did agree to the 15 outright as their responsibility. And also, in your recommendation, are you saying should we consider increasing the percentage of affordable housing? Are you saying should be consider an increase to the 15 percent?

MR. ANAYA: Mr. Chairman, Commissioner Campos, two-fold. Yes, I think that in the future you should consider increasing the 15 percent and I think you should also add a multi-family provision which would be another percentage to deal with the multi-family housing aspect.

COMMISSIONER CAMPOS: Okay. Thank you.

CHAIRMAN DURAN: I just have one question or comment on the multi-family. The multi-family doesn't benefit—to me that's an income stream for someone to take advantage of. It doesn't provide any affordable housing. There's no affordable housing benefits. It's cheap rent but that's about it. I would be opposed to having that incorporated in this affordable housing ordinance. I think that if there's a need for below-market rents out there that we should deal with that separate from the affordable housing ordinance. Or how are we going to qualify someone under that program?

MR. ANAYA: Mr. Chairman, briefly, I agree with you that they should be separate sale of housing, but that affordable housing through the tax credit program is a very effective mechanism to drive rents all the way down to accommodate people at 60 percent or below of the median income, which will be real needed in that community once it's completely built out. But I would agree that they need to be separate.

CHAIRMAN DURAN: Because that's a totally different discussion. Okay, so thank you very much. So are you going to make sure that Mr. Loftin is here at that next meeting, right?

MR. ANAYA: Yes, sir, Mr. Chairman.

CHAIRMAN DURAN: Okay. Thank you.

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X. B. Land Use Department

- 1. Request authorization to publish title and general summary of an ordinance amending Article XV of the Santa Fe County Land Development Code (Ordinance 1996-10) as amended, Community College District Land Use and Zoning Regulation to clarify the design management process; to add and amend design, development, and zoning standards; and to amend the land use table**

JUDY MCGOWAN (Senior Planner): Mr. Chairman, Commissioners, I would like to add that at this point staff is asking for one additional authorization but I'll get to that in my very brief presentation.

CHAIRMAN DURAN: Has it been published?

MS. MCGOWAN: We're asking for permission to publish right now.

CHAIRMAN DURAN: Okay. Do we have a problem of notice?

MR. GRAESER: Mr. Chairman, we looked at this in the agenda item requesting to publish title and general summary is sufficiently broad and is in an early enough stage that public notice isn't an issue. So I think given permission to publish title and general summary with their addition is going to be fine.

CHAIRMAN DURAN: Okay.

MS. MCGOWAN: And I'll explain what the addition is. It's tied directly to one of the items of design standards. Briefly, if you'll all recall, back when the Community College District Ordinance happened in December of 2000, November and December of 2000, staff at that point informed the Commission that there were some pieces that were being left out, what we were calling phase 2 design standards, because we hadn't had time to get down to that level of detail of how things would look or what kind of standards we should have. And at that point, the Board of County Commissioners also directed that we come back with a review of the land use table and any recommendations for changes in that.

And that is what we're proposing to bring forward now, is our recommended additions to the Community College District Ordinance, and changes to the land use table. And those basically are, we have a rough draft that is now being reviewed by staff. We had a meeting this morning and made some changes to it. And we'll continue to do that until we have a final draft and we'll at that point set it for public hearing and advertise public notice and do all the notice requirements and review requirements for the other committees.

What the ordinance proposes are some additional definitions, some amendments to the procedures that are in the ordinance that will help to clarify what we're going to call a design management process. In other words we want to very carefully state what the intents are for each level of review, and try and coordinate the submittals very carefully with that intent so that you're getting the right level of information at each step along the

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way. And in fact, we will be asking for more information in the Community College District then about the design of the development, both streetscape and building fronts than we ask for anywhere else in the county.

We also are going to come forward with some design standards, including design standards for centers, which are the most important core of these communities, some amendments to the parking standards, some standards for landscaping and signs, so that we scale our landscaping standards and our buffer standards and our sign standards to the pedestrian scale of the community. Some corrections that have come up where people were misunderstanding certain intents or language in the existing ordinance and if we can clarify that with corrections we would like to do that.

And in the course of preparing the landscape standards, it became clear that there are amendments that are needed to the general landscape standards in the County Code. And primarily what we would propose is to add some additional references for locations where people could find lists of plants and standards and planting standards for the area that are xeriscape and native plants, and also we would like to add the list of invasive plants as developed by New Mexico State University for the state of New Mexico and prohibit those as proposed plantings when you come in with a development plan. And in the course of doing that we would delete some existing plants, a handful of existing plants from our existing list.

So that is the section that's outside of the body of the Community College District Ordinance. It's an appendix to the County Code and we would like to propose to amend that.

CHAIRMAN DURAN: Okay. This is just a request for authorization and we're going to have plenty of public hearing and we have a full agenda. I'm going to ask the Commission to authorize or not authorize this request.

COMMISSIONER SULLIVAN: Mr. Chairman, I'd just like to add one thing to broaden the authorization a little bit. It says amend the land use table and I'd like to also add in to amend the land use zoning map. I've had some items on that that I've had some discussions with the staff on and let them review it and then they can bring it back for the Commission's consideration.

CHAIRMAN DURAN: I don't have a problem with that.

COMMISSIONER SULLIVAN: I'd move to approve—was there something else that you were—

CHAIRMAN DURAN: Do you know what they are?

MS. MCGOWAN: In general I know what the recommendation was. I'm not quite sure how I would approach it.

CHAIRMAN DURAN: What are those? Can you elaborate some on that?

COMMISSIONER SULLIVAN: Well, I've looked at the first draft that the Planning staff has done and they've worked on some changes to the—is it the matrix, the uses—

MS. MCGOWAN: The land use table?

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COMMISSIONER SULLIVAN: The land use—we worked on some matrix, changing some matrices in the land use table and there's two major ones in there and one is what's called the institutional campus. Is that what it's called? Institutional center?

MS. MCGOWAN: Institutional campus is one of the district centers.

COMMISSIONER SULLIVAN: Institutional campus center and there's another that's called an employment center. And originally they had quite a few differences to them and now, at least with the proposed changes, and I don't know what's finally going to come back from the staff, they're getting very close to being pretty similar to each other. The only difference being, as I can see and again, I won't know until staff makes their recommendation. The only difference being between an institutional and an employment center is that employment center allows commercial, like auto body shops and things like that.

That's a simplistic summary. But until I see what the staff is recommending, I think as we get close to these two zoning categories being the same, it may require some rethinking of some of those zoning blobs that were in the zoning map because we end up with perhaps too much of one possible thing in an area where we're getting so close on those land uses, those committed land uses. But I won't know, I won't have specific recommendation until I see what the final staff recommendation is. So I just wanted to add that zoning map into the title and summary so we could at least talk about it.

COMMISSIONER TRUJILLO: Is that, Mr. Chairman, is that feasible, Judy? Or do you propose or recommend that we look at that separately, because it seems that that part of it will convolute what you're proposing here. I think that it needs to be looked at separately from this.

MS. MCGOWAN: Mr. Chairman and Commissioner Trujillo, I think that we certainly can take the direction to look at the land use table and make sure that we are keeping the function of the institutional campus separate and more specific to what was envisioned for those uses and not make sure it's overlapped too much with the new community centers, employment centers.

As far as amending the zoning map, I would need direction from the Board to know what staff should bring forward, I believe.

COMMISSIONER SULLIVAN: Mr. Chairman, our goal, our procedure was to look at the entire Community College District Ordinance each year, roughly, just as we would look at all community district ordinances. And if we limit the ability to look at any portion of it then it doesn't seem to me like we're looking at the whole ordinance. If we exclude the zoning, that's certainly a big part of the ordinance. The Commission has anything that's brought forward, the Commission has the right to act on, but I don't think we should at this stage exclude anything from being considered by virtue of eliminating it from the publishing and title.

COMMISSIONER GONZALES: Mr. Chairman, Commissioner Sullivan and Judy, is this—are we at the—I concur that we have to do a periodic review of the

Community College District to make sure that it's meeting the goals and the mission. I don't—have we gone far enough to know whether it's time to re-examine the zoning map?

We haven't seen, or I haven't recalled anything coming in that would cause concern of the zoning maps. Is there new information that has come up since we passed the zoning maps that would cause us to reconsider what they look like? It was my impression that as we started seeing what was coming in, what the market was driving that the market may be saying something very different or asking for something different than what the zoning maps were, which may cause us to change them or to keep them in place because we're not liking what we're seeing coming up necessarily or whatever it might be.

But I guess the issue is have we gone far enough into the Community College plan or seen enough to begin to start this issue of redoing the zoning or reconsidering it is my only issue.

CHAIRMAN DURAN: Excuse me. I think that is we start bringing the zoning issues up that we open up a whole other set of circumstances. And I think that if Commissioner Sullivan has some concern about specific zoning out there that he should bring them up individually so they can be discussed rather than have to revamp or review the whole zoning process. That took us months to go through.

COMMISSIONER SULLIVAN: I think, Mr. Chairman, this is the annual review and I think if we wait another year, if we are going to make any changes, and when you see these changes in the land use table you'll see there's a number of changes. A lot of what were the special uses now are exes which means they can be, they're automatically granted. There's a significant number of changes in the land use table and that really bears on the zoning. If we wait until things are built and we come back and try to change, make any changes to the zoning map, then the landowners and the developers are going to say, Wait a minute. We've put a lot of money into this. We've committed to this zoning program and we don't want you to change it now. So I think the earlier we review it the less impact it would have if there were any changes on a property owner. That's the reason for looking at it now.

CHAIRMAN DURAN: You made a motion to approve this with you amendment. Did you get a second.

COMMISSIONER CAMPOS: Question. Could I ask a question?

CHAIRMAN DURAN: There is no second.

COMMISSIONER CAMPOS: I'll second it for discussion. Is there any notice issue with changing the proposal?

MR. GRAESER: Mr. Chairman, Commissioner Campos, I don't believe there is. You're—the authority you have when you're coming forward to request permission to publish title and general summary is quite broad. And really it's more of an internal thing to get the Commission's go-ahead to start the process. You certainly, at the ordinance stage something like this would be an issue. At this stage I don't believe it is.

COMMISSIONER CAMPOS: Mr. Chairman, I'd like to move forward with it, even if it's flawed in the language that Commissioner Sullivan has proposed.

CHAIRMAN DURAN: I'm suspect of it. I'm sorry.

COMMISSIONER SULLIVAN: Well, that's what the public hearing process is for.

COMMISSIONER GONZALES: Commissioner Sullivan, I agree that—I'm all for doing the reconsideration but I'm not sure if this is the place to attach it. I agree with what Commissioner Duran is saying that it's something that should be brought up that each of us have the opportunity to bring it up separately, it seems like.

COMMISSIONER SULLIVAN: Well, when would be a better time to bring it up than the first major review of the Community College District Ordinance. After we went through that whole review and then I were to come back and suggest some changes to the zoning map, what would be the Commission's feeling then? That we just went through all of this.

COMMISSIONER GONZALES: I think based on what we're going to go through this process now is going to lend itself to the discussion. If through this process we determine we need to change the zoning maps then we set the direction to come forward, it seems like.

CHAIRMAN DURAN: We can change them now. Okay, well, I'm going to call for the question. Those in favor of the motion, signify by saying "aye." [Commissioners Campos and Sullivan voted with the motion.] Opposed? [Commissioners Gonzales, Trujillo and Duran voted against.]

The motion dies. Is there another motion?

COMMISSIONER GONZALES: Move to approve the request for authorization to move forward.

COMMISSIONER TRUJILLO: Second.

CHAIRMAN DURAN: Any further discussion? Those in favor signify by saying "aye." [Commissioners Gonzales, Trujillo, Duran and Campos voted aye.] Opposed? [Commissioner Sullivan voted nay.] Motion carries.

MS. MCGOWAN: Thank you, Mr. Chairman and Commissioners.

MR. GRAESER: For clarification, Commissioner, did that motion include Judy's suggested amendment.

CHAIRMAN DURAN: Yes.

COMMISSIONER SULLIVAN: I didn't understand. What was your suggestion? You said you wanted to include things about the land use table, but that's already in the notice.

MS. MCGOWAN: My suggestion is in the memo under Action Requested. I added that we also be allowed to amend the appendix with the landscaping types and the botanical list in it.

CHAIRMAN DURAN: Okay, we're going to take a five minute break.

[The Commission recessed for ten minutes.]

COMMISSIONER SULLIVAN: We'll call the meeting back to order.
We're on agenda item X. B. 2.

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COMMISSIONER CAMPOS: Mr. Chairman.

COMMISSIONER SULLIVAN: Commissioner Campos.

COMMISSIONER CAMPOS: I understand that County Manager Lopez would like to ask for a rearranging of the cases because of time issues with staff.

COMMISSIONER SULLIVAN: Estevan?

MR. LOPEZ: Mr. Chairman, that's correct. If the Commission would, I would request that we move up the Utility Department items. Mr. Roybal has to attend a meeting with the tribal council at San Ildefonso a little later today. And then, I'm not sure exactly when this should happen but also Ms. Katherine Yuhas, our County Hydrologist was going to be presenting most of the case relative to the Garcia Subdivision appeal, that is under the public hearings. She also, if at all possible, we'd like to try and get her out of here by 7:00 so she can be at a meeting in La Cienega at 7:00.

COMMISSIONER SULLIVAN: What's the wish of the Board?

COMMISSIONER CAMPOS: I make a motion that we go forward with the recommendations of the County Manager.

COMMISSIONER GONZALES: Second.

COMMISSIONER SULLIVAN: Any discussion. So the recommendation is to next take up item D.1, the D.2, D. 3 is tabled, and then move to public hearings, item XI. A. 1. Is that your recommendation, Estevan?

MR. LOPEZ: Mr. Chairman, that's correct. Assuming that the—

COMMISSIONER SULLIVAN: XI. A. 7, excuse me.

MR. LOPEZ: Right. And we had moved that up to position number one. But I just want to make sure that, with the caveat that we make sure that all of the applicant, the appellant and the various people that are needed for that case are present at the time it comes forward.

COMMISSIONER SULLIVAN: So when we get to that it will be after 5:00 and we'll ask if both the applicant and appellant are here.

MR. LOPEZ: Right.

COMMISSIONER SULLIVAN: There's a motion and a second. All those in favor say "aye." [Unanimous] Those opposed? Motion carries.

X. D. Utilities Department

1. Resolution No. 2002-20. A resolution calling for cooperation between the City and the County of Santa Fe for funding of a surface water diversion project at the Rio Grande

GARY ROYBAL (Utilities Department Director): Good afternoon, Mr. Chairman, Commissioners. My name is Gary Roybal. I'm the Utilities Department Director. Before you is a proposed resolution calling for cooperation between Santa Fe County and the City of Santa Fe on activities related to the funding of the proposed water

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diversion project at the Rio Grande. To that end, the resolution states that the County of Santa Fe and the City agree not to compete for any state or federal funding, but would work together in cooperation and pool their resources together to acquire and obtain funding for the proposed project.

I would add that this resolution that is before you was adopted by the City of Santa Fe on January 30, 2002.

COMMISSIONER GONZALES: Move for approval.

COMMISSIONER TRUJILLO: Second for discussion.

CHAIRMAN DURAN: Motion for approval and second. Discussion?

COMMISSIONER TRUJILLO: Mr. Roybal, does this take into consideration the issue with San Juan Chama water rights and that sort of thing, and the City's position regarding that issue?

MR. ROYBAL: Commissioner Trujillo, no it does not. It does not address the issue of the San Juan Chama water rights.

COMMISSIONER TRUJILLO: It gives impetus to diversion on a diversion point.

MR. ROYBAL: Yes. What it does is it's a joint effort to obtain funding to build the proposed diversion project at the Rio Grande.

COMMISSIONER GONZALES: Mr. Chairman.

COMMISSIONER SULLIVAN: Commissioner.

COMMISSIONER GONZALES: Is this inclusive of the upcoming GRT election that we'll be proposing? That they would be allowed as a result of this resolution to participate in that funding?

MR. ROYBAL: Mr. Chairman, Commissioner Gonzales, no. This is just for the purpose of jointly proposing and working together with the City to obtain state and federal funding. This is outside or exclusive of the GRT.

COMMISSIONER GONZALES: Some of those federal funds are going to require local matches, which I'm assuming would be coming from the GRT revenue, if approved would be used. So in effect. So what we're saying basically is that the only thing that's on the table right now for the City and the County is to share any money that's coming from Washington. Anything else is not yet on the table?

MR. ROYBAL: Mr. Chairman, Commissioner Gonzales, yes. That's correct. And also any funding that comes from the state in the form from the New Mexico Finance Authority or any other grants of that nature.

COMMISSIONER GONZALES: Okay. Thank you.

COMMISSIONER CAMPOS: Mr. Chairman.

COMMISSIONER SULLIVAN: Commissioner Campos.

COMMISSIONER CAMPOS: Mr. Roybal, has there been a problem of non-cooperation? Is that why the City has referred this to us? Do you understand why, do you have any explanation why this is coming forward? I haven't heard of any conflict between the County and the City and we have been working cooperatively on the funding.

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Is there any issue that you've caught on to?

MR. ROYBAL: Mr. Chairman, Commissioner Campos, no. I think this just memorializes the current activities that are ongoing.

COMMISSIONER CAMPOS: I understand that the City was seeking funding at this last legislative session for the diversion project. Do you know how that turned out?

MR. ROYBAL: Mr. Chairman, Commissioner Campos, no I don't.

COMMISSIONER CAMPOS: Mr. Lopez, do you know?

MR. LOPEZ: Mr. Chairman, no I don't. They do have, basically what I know about is, I don't think they got anything in terms of capital outlay from the state legislature but they do have a pending application before DFA that we have supported.

COMMISSIONER CAMPOS: We have been in support of. And that would be pooled for the diversion project and it would be equally shared or just be the City? Would they get 100 percent credit? Would we get 50-50 credit?

MR. LOPEZ: Mr. Chairman, I believe that this resolution says that it would be pooled and that we would share in it equitably.

COMMISSIONER CAMPOS: Okay. What does equitably mean?

MR. LOPEZ: It's not been defined yet. I think basically that has yet to be resolved but I guess I would say it's just any federal or state funding reduces the overall cost of it, then we would share in our proportionate shares on the local match portion I would think.

COMMISSIONER CAMPOS: Okay. Thank you.

COMMISSIONER SULLIVAN: Mr. Roybal, I have a question. The bulk of the resolution says that the City and County agree not to compete for federal and state funding for the proposed Rio Grande diversion project but rather work together and pool their resources to obtain funding for the project. So we're only talking about the Rio Grande diversion project on this. So who makes the funding requests and on whose behalf are these funding requests made? In other words, if we were to ask for money from the federal government, we'd have to ask on someone's behalf. It would have to go to an entity. On whose behalf would those requests be made?

MR. ROYBAL: Mr. Chairman, Commissioner Sullivan, if I understand your question correctly, I believe these would be joint requests by the City and the County both. For instance, a federal agency, Bureau of Reclamation or some other agency giving a grant, I'm aware that the City of Santa Fe did make a request to the New Mexico Finance Authority and the County did support that request.

COMMISSIONER SULLIVAN: But if we went along with the intent of this resolution and we were to go and send Commissioner Gonzales to Washington to lobby to get money from federal funds for this diversion project, on whose behalf would be lobbying? Who would be the recipient of the money if it were to come?

MR. ROYBAL: Mr. Chairman, Commissioner Sullivan, given that scenario, I would believe the Commissioner would be lobbying on behalf of the County but

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the benefits of the funding would go to both the City and the County towards the reduction of the cost of that project.

COMMISSIONER SULLIVAN: So if ask for x-million dollars to support the Rio Grande diversion project, we would have to ask for it to be given some percentage to the City and some percentage to the County? Or half and half? That's kind of some of the crux of the things that haven't been decided yet. I'm not quite sure how—the feds would be as confused as I am, I think as to where the money was going to go.

MR. ROYBAL: Mr. Chairman, Commissioner Sullivan, we are in the process of structuring those types of transactions as of today. Because the federal government, I think, has had some confusion in the past and I believe that the County Manager, Mr. Lopez, kind of established the type of procedure that we would look at. For instance, if the County received \$10 million towards a project, that would go towards the reduction of the cost, and then any remaining cost would be split up according to the percentages of our capacity on that system.

COMMISSIONER SULLIVAN: Okay. This doesn't say that but that's what you're thinking. Regardless of who that \$10 million went to, whether it went to the City or went to the County.

MR. ROYBAL: Mr. Chairman, Commissioner Sullivan, yes. I don't think the resolution goes to any type of allocation of funding or any percentages of responsibility for the project. I think the resolution just goes that we will cooperate together, we will pull our resources and we will seek funding jointly from the state and federal entities to reduce our cost of the project. And I believe the allocations will be addressed later on.

COMMISSIONER SULLIVAN: Do you have any questions, Commissioner Duran?

CHAIRMAN DURAN: No, just a comment. When we were in Washington last year, we went united and our Washington delegation was under the impression that we were working together on trying to get these funds and that those funds would go towards the diversion project and our immediate water needs. And I agree with you. I think the understanding is then there's an outstanding balance that that would be paid for based on whatever—however we've appropriated the water usage, the formula we still haven't worked out. Right?

MR. ROYBAL: Well, Mr. Chairman, right now the percentages that are out there is a 60/21/19 percent. Sixty percent of the diversion project would be allocated to the City, 21 percent to Las Campanas and 19 percent to the County. And those appear to be the allocation percentages that would go towards the cost allocation. Any remaining costs.

COMMISSIONER TRUJILLO: Does the County agree with that distribution?

MR. ROYBAL: Mr. Chairman, Commissioner Trujillo, yes. Those are based on the diversion amounts that we would be requiring through the year 2010. And our percentage would be 19 percent of the capacity of that diversion and transmission

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facility.

COMMISSIONER TRUJILLO: I was under the impression that the County's part in that went up to 50 percent. Are we talking about San Juan Chama water rights?

MR. LOPEZ: Mr. Chairman, if I may interject. Commissioner Trujillo, no, this is not regarding our relative allocation of San Juan Chama. This is capacity that each entity would have from the Buckman diversion structure. And as Mr. Roybal mentioned, the way we arrived at that number is for the various entities that are involved in that project, that is the City, the County and Las Campanas, to determine how much capacity each of us needs through 2010. And that basically used up the entire capacity of that structure. It doesn't talk at all about allocation of water rights amongst ourselves.

CHAIRMAN DURAN: The capacity of the structure to deliver water through that particular system.

COMMISSIONER SULLIVAN: So Mr. Lopez, that's the wet water argument. So we've kind of gotten to that point on the wet water and capacity. We are still quite a ways from agreeing on the water rights.

MR. LOPEZ: Mr. Chairman, Commissioner Sullivan, that's correct. And I guess just to put things in context, that 19 percent that we bargained for to meet our needs through 2010 equated to, I believe it was 1700 acre-feet.

CHAIRMAN DURAN: Excuse me. And the City is in agreement with this particular allocation, not for water rights but for the cost of the project?

MR. ROYBAL: Mr. Chairman, yes, that's correct.

CHAIRMAN DURAN: Okay, so there's hope.

COMMISSIONER SULLIVAN: There's a motion on the table. Was there any further discussion?

MR. LOPEZ: Mr. Chairman, I misspoke a while ago when you asked me about allocations from the current, the most recent legislative session. There was an allocation of \$50,000 to the City under capital outlay for the Buckman project. That's still subject to signature by the Governor.

COMMISSIONER SULLIVAN: That was done while this resolution was in effect from the City?

MR. LOPEZ: Mr. Chairman, that's correct.

COMMISSIONER SULLIVAN: Any further questions? Those in favor of the Resolution 2002-20, say "aye." [Unanimous] Those opposed? Motion carries.

Back to you, Mr. Chairman. We're on item X. D. 2. We skipped down to that at the request of the County Manager.

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X. D. 2. Request adoption of the memorandum of understanding among the USDA Forest Service, Santa Fe National Forest, USDI Bureau of Land Management, USDI Bureau of Reclamation, City of Santa Fe, County of Santa Fe and Las Campanas Limited Partnership for the proposed Buckman diversion project

MR. ROYBAL: Mr. Chairman, Commissioners, before you is a memorandum of understanding between the parties just mentioned. This memorandum of understanding or MOU establishes the framework and the process under which the National Environmental Policy Act process will take place for the proposed diversion project at the Rio Grande.

Basically, the Forest Service and the BLM will be the lead agencies in this process.

The cooperating agencies will be Santa Fe County, the City of Santa Fe and the Bureau of Reclamation. And the MOU before you basically just sets out the roles and responsibilities of the parties in this process. And I stand for any questions on that.

CHAIRMAN DURAN: Gary, has this been in front of the City Council?

MR. ROYBAL: I believe it has, Mr. Chairman.

CHAIRMAN DURAN: Have they voted on it or taken any action?

COMMISSIONER SULLIVAN: It's signed by the Mayor?

CHAIRMAN DURAN: Oh, it is?

COMMISSIONER SULLIVAN: February 1st.

MR. ROYBAL: Yes, they have already signed the MOU, Mr. Chairman.

CHAIRMAN DURAN: Okay. Any questions of staff?

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman.

COMMISSIONER GONZALES: Second.

CHAIRMAN DURAN: There's a motion and a second. Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

Thank you, Gary. Okay, are we going back to the—

COMMISSIONER SULLIVAN: Mr. Chairman, there was one other that the County Manager requested which was XI. A. 7, which had already been moved up to the first position, provided that both the applicant and the appellant were here. I believe some of the water staff has to get to another meeting is the reason they wanted to move that up. You need to ask if they're both here, I think. Whether both the applicant and the appellant—

CHAIRMAN DURAN: Is the applicant here?

COMMISSIONER SULLIVAN: That's the appellant.

CHAIRMAN DURAN: Are the Garcias here? Okay. We'll go ahead and go forward with it.

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XI. A. 7. CDRC CASE #APP 01-5351. Garcia Subdivision Appeal. John Maruska, applicant, is appealing the County Development Review Committee's decision to uphold the Land Use Administrator's decision to allow a summary review subdivision to divide 12.6 acres into 5 lots for John Paul and Veronica Garcia. The subject property is located on Shenandoah Road in the North Fork area, within Section 25, Township 15 North, Range 8 East

WAYNE DALTON (Review Specialist): Thank you, Mr. Chairman, Commissioners. Jack Maruska is appealing the County Development Review Committee's decision to uphold the Land Use Administrator's decision to approve a summary review subdivision to divide 12.6 acres into five lots for John Paul and Veronica Garcia. The property is located on Shenandoah Road in the North Fork area within Section 25, Township 15 North, Range 8 East. The Board of County Commissioners heard this case on November 13, 2001. The decision of the Board was to table this case to allow the State Engineer's Office to review a hydrology report that was conducted on November 1 through November 7 of 2000.

The State Engineer's comments are attached in Exhibit L. The Santa Fe's response is that the information reviewed has not proven adequate water to create five lots. Their calculations require 6.5 acres per lot which would not allow for any division of this land.

CHAIRMAN DURAN: Any questions of Wayne?

COMMISSIONER GONZALES: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Gonzales.

COMMISSIONER GONZALES: Wayne, and this might be more for Katherine. Help me understand—first of all, let me ask this question. I understand there was a hydrologist report or study that was done on the property. Is that correct?

MR. DALTON: Mr. Chairman, Commissioner Gonzales, that's correct.

COMMISSIONER GONZALES: Was it a full-blown hydrology or was it a reconnaissance?

MR. DALTON: Mr. Chairman, Commissioner Gonzales, it was a full-blown geo-hydro.

COMMISSIONER GONZALES: It was a full geo-hydro report, study that was done? And the study determined, which was originally brought in that that well was pumping sufficient water to support the split? Is that correct?

KATHERINE YUHAS (County Hydrologist): Mr. Chairman, Commissioner Gonzales, when I first reviewed this report, that was my opinion, yes. So this lot split was originally approved and then it was appealed by Mr. Maruska. And at that point the Board requested that this be sent back over to the State Engineer's Office to be reviewed. The State Engineer came back with the opinion that Wayne has just explained to you and then at the Board's request, I think in December you all requested that I meet with the State Engineer to resolve our differences, because the State Engineer was

recommending that this lot split not be approved and I was recommending that it be approved.

I did meet with the State Engineer on January 14th and I'd like to add that Tom Morrison of the State Engineer's Office and Brian Wilson are both here. They came tonight to support their opinion and answer any questions you might have.

CHAIRMAN DURAN: And what is their opinion?

MS. YUHAS: Their opinion is that there's not sufficient water to support this lot split, and after meeting with them on January 14th, I concur with their opinion that there is not adequate water. While I met with Mr. Morrison on the 14th he explained to me that in this area the State Engineer has reports of declining water levels, dry holes and decreased yield from wells. And in light of that information, I have to concur with them that it's not prudent or in the best interests of the citizens of Santa Fe County to proceed with the lot split.

COMMISSIONER GONZALES: Mr. Chairman, Katherine, help me understand this a little bit, because I know that we dealt with this during the Eldorado moratorium when we were talking about your analysis of wells and the fact that every time that you would conduct an analysis of a well log or well activity that not only did you take into account what was happening on the lot but that you would determine that there were no negative impacts that were taking place within the Eldorado community and surrounding communities. Is that an approach that you take on every geo-hydro study that you look at, or is it just because the Commission had directed you to make sure that that would be an additional step that you would take?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, I'm glad you brought that up because right now, the County Code does not provide a provision to look at regional water supply problems or water quality problems when a geo-hydro report is submitted. So the only way I know to look at regional issues is if I already know that there are problems in the area. And obviously in Eldorado that's something that I know about. Other areas of the county, it's a big county; I can't always know about every issue.

I would very much like to see in our efforts to work on the Code to add sections that we add this portion.

COMMISSIONER GONZALES: So when you did your first review of the geo-hydro test that was submitted by Mr. Garcia, you did not take into account what was happening in the surrounding area?

MS. YUHAS: That is correct.

COMMISSIONER GONZALES: And so when the State Engineer reviewed it, they took into account what was happening in the overall area.

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, that's correct.

COMMISSIONER GONZALES: So to the Code itself and specifically to the Code, are you saying that the Code does not—what does the Code say directly to lot splits that are being proposed? Does it go directly to just the well test that's on the lot, or does it allow for their to be consideration of factors in the surrounding area?

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MS. YUHAS: Mr. Chairman, Commissioner Gonzales, it allows for consideration of factors in the surrounding area. Absolutely. But right now one of the required submittals is not information on any potential issues in the surrounding area. So it's fine for me to ask for that information. It's fine if I already know if I have that information. The issue comes up in this situation.

COMMISSIONER GONZALES: So my question for Wayne, then, Mr. Chairman, is, what I understand the County Land Use Administrator refused to—well, the hydrologist reversed her decision but the Land Use Administrator determined that he would not reverse his decision granting the administrative split. Is that correct?

TOM DOMINGUEZ (Subdivision Engineer): Mr. Chairman, Commissioner Gonzales, let me repeat it to make sure I got what you're getting at. You're asking if even if the County Hydrologist changes her opinion that the Land Use Administrator still has the authority to maintain his?

COMMISSIONER GONZALES: I apologize. Prior to this consent to the State Engineer that the Land Use Administrator, you granted the administrative subdivision. Is that correct? It was an administrative subdivision? The reason it's here is because it's an appeal? Is that right?

MR. DOMINGUEZ: That's correct, Mr. Chairman, Commissioner.

COMMISSIONER GONZALES: So the appeal came forward to the Commission. The Commissioners said, Well let's look at the greater area, therefore we'll send it to the State Engineer's Office, see what their comment is. Came back. Our hydrologist reversed her support for the lot splits and from what I understand, the Land Use Administrator did not reverse their support for the splits. Is that right? So I guess my question is, are you supporting the lot splits this evening.

MR. DOMINGUEZ: Mr. Chairman, I have met, and Commissioner Gonzales, Roman and I have met and we have talked at length with Katherine Yuhas and Wayne on this. And the position that Roman has taken is he's deferring to the County Hydrologist and to this Board to determine if they want to uphold the County Hydrologist's determination. He has not maintained that it is a viable split.

COMMISSIONER GONZALES: Well, let me ask you this question then, Tom. Knowing everything that you know today, if this was presented before you during the summer or whenever this application came forward, would the Land Use Administrator be recommending approval of these lot splits?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Gonzales, with all the information that we have today and with the recommendation that the hydrologist is maintaining now that this should not be split, we would not approve this.

COMMISSIONER GONZALES: Okay. So the Code gives you that discretion based on the information that exists today.

MR. DOMINGUEZ: Commissioner, that's correct, based on the language for a geo-hydro report and the results thereof.

CHAIRMAN DURAN: Tom, I have a question. Was there anything less

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than five that would be appropriate or considered? Was there any discussion?

MR. DOMINGUEZ: Mr. Chairman, I'll address that and if Katherine would like to add to it I'll let her. We did, initially when we looked at this, because it was quite a difference, both ends of the spectrum, one versus five. We did look at something that would be sustainable anywhere within there. After real detailed review with Katherine and her meeting with the State Engineers, we've determined that this probably should not be split. So we determine that there probably was no middle ground that we could support.

CHAIRMAN DURAN: So the geo-hydro that was done on the property just had insufficient data for you?

MR. DOMINGUEZ: Mr. Chairman, the Code is specific to an onsite well, a geo-hydro done from an onsite well. It does not look regionally. It just looks at site-specific and to neighboring properties. From my understanding is that the State Engineer's Office reviewed this more globally in the region and looked at the detriment to wells already existing from certain circumstances.

CHAIRMAN DURAN: Are we changing the Code then? Is there movement to—if we're not looking at it from a regional point of view, don't you think that's a flaw in the Code?

MR. DOMINGUEZ: Mr. Chairman, we have, I have come before at that budget review asking for funds for a Code rewrite so that we could include some of these changes in there and it would be an overall Code change. And I believe that during the meeting, during the distribution of your contingency monies, that that's going to be part of the request is to fund that Code rewrite project. I've already developed the RFP and we're ready to go if we have the funds.

CHAIRMAN DURAN: Thank you. Any other questions of staff?

COMMISSIONER GONZALES: Let me just go back, Tom, to the opinion on January 8th from Wayne to the Commissioners where Wayne is—there is a point here where Wayne is talking about the applicant and that the applicant states that the granting this land division is in direct conflict with the County lot split restrictions. I'm assuming that's directed to the water. He states in here the hydrology test conducted on this lot has demonstrated enough water to support further division from 12.6 acres into five 2.5 tracts.

Was this done prior to—okay, this was done prior to a State Engineer's review?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Gonzales, that's correct.

COMMISSIONER GONZALES: In terms of Mr. Garcia following the Code, from what I understand he's done everything that County staff has asked that he do to prepare the submittal. Is that correct?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Gonzales, that correct.

COMMISSIONER GONZALES: At any point during this process that we begin to get concerned after the Commission had sent this to the State Engineer's Office, was Mr. Garcia contacted?

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MR. DOMINGUEZ: Mr. Chairman, Commissioner Gonzales, it's my understanding that Katherine Yuhas did speak with Mr. Garcia.

COMMISSIONER GONZALES: Has there been an effort at all between the applicant and the community out there to try and resolve this prior to this coming forward or is this being brought forward more so for not only making a decision on this but determining some policy considerations?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Gonzales, the applicant can either nod or we can ask him. I'm not aware that he has met with anybody in the community to try and bring resolve to this. This was not brought forward to change some sort of a policy. Katherine said that she would have added one more thing is that we do have the discretion to look regionally. The Code does not require that we look regionally. And the point I mentioned earlier about us wanting to affect the Code and the change and the rewrite of the Code, we would just include this as part of many things.

COMMISSIONER GONZALES: One final question, Mr. Chairman, if I can, to the attorney. Chris, what is the County's obligation, at least for the record, because I'm assuming that regardless of our decision tonight there may be some legal action, so before we move into administrative, what is our obligation in terms of making a decision here today, considering what we know the facts are in terms of an arm of the County Commission granting approval, it being appealed, then the staff reversing their decision and now it being brought before the Commission?

MR. GRAESER: Mr. Chairman, Commissioner Gonzales, procedurally, all the proper things have happened with this. Certainly there's an issue of better late than never with some knowledge we received, but this is properly in front of the Commission. And yes, the Commission's obligation, the Commission has an obligation to use the best and current information available to it. Now that the State Engineer has had an opportunity to take advantage of their better resources and the County Hydrologist has met with them, I think the Commission has an obligation to base its decision on the information in the packet and any testimony which is the best and current information available now, not what was available six months ago.

COMMISSIONER GONZALES: I said that was the last question. I have one more question. One more question as to the issue that the role the State Engineer is playing in this. Will the State Engineer play a—is there a decision now by the Land Use Administrator's Office for the State Engineer to continue to play a role in reviewing applications that come forward where geo-hydro reports are submitted?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Gonzales, the quick answer would be it's already dictated in the Code right now. It depends on the magnitude of the division. The State Engineer's Office is a reviewing agency for a certain size of subdivisions and development. On this, where we are allowed the authority for administrative approval, we don't currently send it to the State Engineer's Office. This went to the State Engineer's Office I believe at the request of the Board to send it over there and our policy now, I believe what we're looking at is looking regionally now, looking at wells

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in the area and looking at reports like that to include and have a better understanding of the effects that a lot split would take in the region.

It's not our intent right now to add the State Engineer's Office unless we're given direction by this Commission to send it to them.

COMMISSIONER GONZALES: Thank you.

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Tom, I conjecture that the constrained water situation in the area has existed for a long time, for a while. Is that correct? How many lot splits have occurred in that area in the last five years?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, I couldn't give you an accurate number or an exact number but I do recall, I've been in this capacity for a little over two years and I can recall at least five different applicants that have come forward in that time for two or more lot splits in two years.

COMMISSIONER TRUJILLO: And the same requirements were not mandated of those applicants, that we look at the water situation from a global, from a regional standpoint. The submittals were done on the sustainability of the existing wells in the property. Is that correct?

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, that's correct. We have just relied on what the Code has told us for an onsite geo-hydro, not regionally.

COMMISSIONER TRUJILLO: And this was done because it's an appeal? And ostensibly the appellant is saying that the impact of this lot split will have a disparate impact on the area, on the region there.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, the State Engineer was brought in on this one at the direction of the Board of County Commissioners on the appeal.

COMMISSIONER TRUJILLO: So essentially, we're setting precedents for that area at this point. Right? We haven't done it up to now. If we do it now it will set precedents.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, that's a correct statement. I believe I would further add to that that we internally will probably now be looking more regionally because of the concern that has come up.

COMMISSIONER TRUJILLO: That means we'll have to change the Code countrywide.

MR. DOMINGUEZ: Mr. Chairman, Commissioner Trujillo, we currently have the discretion to do that now. We have just been looking at the letter of the law and it is not a requirement. Continuing with what we were talking about, as I mentioned it was at the direction of this Commission to send it to the State Engineer's. We have no intention of changing the Code unless we're given direction by this Commission to do so. We would continue with our standard policy other than maybe looking regionally through the County Hydrologist.

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COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Tom, in addition to the regional aspect of it, in reading through the packet materials, and I guess we'll hear from the individuals who want to talk about it here in a minute. It seems to me though, even considering that aside that there's a difference of opinion on just the formula and the interpretation of the results in and of themselves. In other words, were we to say this is not a precedent, that the regional situation doesn't apply, anyway, what I read from the various materials that I received, there's a difference of opinion on the technical aspects. What the saturated thickness of the aquifer is, what the yield factor to use is, and that type of thing. So that, and correct me if I'm wrong, Katherine, the issue here, the one that's obviously important to you is the regional impact or the draw-down on the wells and I recall again in just reading through these materials that one test was done and the well produced three gallons a minute and two years later it produced two gallons a minute, indicating some obvious declines in production and the State Engineer's recommendation is that each home have three gallons a minute as an average.

So there wouldn't be certainly enough for five. So the regional impact is obviously an important one. But correct me if I'm wrong. There's issues here aside from that as to what the State Engineer's interpretation is of the actual data within the formula that you typically use.

MS. YUHAS: Mr. Chairman, Commissioner Sullivan, you're correct. The reason I brought up the regional water issues is because it was that concern that once I discussed it with the State Engineer brought me around to thinking that their way of interpreting the formula and handling it and assessing the saturated thickness was correct. And you're right about the decreased yield of the well that was pointed out by the State Engineer. That is correct.

COMMISSIONER SULLIVAN: So I think it's not quite as simple to say that we're applying a new factor in the equation here. We're applying additional information that's used to compute the factors that are in the equation that's already in the Code. And that interpretation is a professional judgement one.

MS. YUHAS: Mr. Chairman, Commissioner Sullivan, I think that is a better way of explaining it. Yes.

COMMISSIONER SULLIVAN: Okay. Thank you. I just wanted to make that clear.

CHAIRMAN DURAN: Okay, is it appropriate to hear from the State Engineer's Office. Are they here as a staff support rather than supporting either the appellant or the applicant?

MS. YUHAS: Mr. Chairman, they're nodding and saying they're here to support staff and that they would like to say something.

[Duly sworn, Brian Wilson testified as follows:]

BRIAN WILSON: My name is Brian Wilson. Mr. Chairman, Commissioners, those of us who work in the State Engineer's Office take the subdivision review process very

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seriously. Our primary concern here is to protect both the public as well as the developers from getting involved in a situation where there's insufficient water available to meet the projected demand for a reasonable period of time.

We reviewed the John Paul Garcia subdivision proposal in 1998 and again in 2001. Our water availability assessment indicates that the 2.5-acre parcels that are proposed are too small to provide homeowners with a water supply that is sustainable for 100 years. Based upon the protocol that's set out in the County regulations, our calculations indicate that a minimum lot size of seven acres would be required.

We are also very concerned that during a pump test that was conducted in 1998, a well yield of approximately 3.1 gallons per minute was sustained for almost seven days. But in 2000, when another pump test was conducted, the well yield decreased to just two gallons per minute after only six hours of pumping. As a general rule, we prefer to see a well yield of five gallons per minute. Now, the consultant for the subdivider has noted in his report that the water in this well has declined some just over the last four years. As time goes on and the aquifer is dewatered we would anticipate that the water level in this well and other wells will continue to decline and that there will also be a decrease in the actual well yields. And that could bring that well yield down to below two gallons per minute.

On the basis of this information we concluded that this subdivision proposal does not satisfy the requirements of Santa Fe County regulations, because it does not satisfy the requirement for providing a 100-year water supply. In January of this year as Katherine Yuhas has already mentioned, she met with our hydrology staff to discuss this proposal. Subsequent to that meeting, on February 11, 2002, I spoke to her on the phone and she indicated that she concurred with our opinion. Suffice it to say that it would be a most devastating experience for any homeowner to run out of water and find out that they do not have any easy remedy to that situation. And if that should happen, the first question they're going to ask is Why did the County Commission and why did the State Engineer allow this to happen?

And that is why we appeared here today, because it is our concern that the welfare of the public would be put at risk if this subdivision proposal would be approved and therefore we recommend to you that it be denied approval.

I also have another concern and it's an administrative concern. We provide a service to the County. We function as a consultant to the County on these proposals. And after the County Hydrologist met with our staff, we never received a letter or a memorandum documenting her final opinion. As public servants, it is our responsibility to document both our analysis and their conclusions so that information becomes available for the public record and so that it's available for others to review.

So I'm making a recommendation here that the County needs to speak to its own staff and try to improve communications with the Office of the State Engineer so there is written documentation of the analysis that your staff produces, so that we are cognizant of what's going on. This basically summarizes our primary concerns with regards to this proposal, and my colleague Tom Morrison, who's with me today, may have some other concerns that I think you also need to hear.

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CHAIRMAN DURAN: Mr. Morrison, do you have anything to say or has your associate here pretty much addressed--Thank you. Please come forward. State your name for the record and let the County Clerk swear you in.

[Duly sworn, Tom Morrison testified as follows:]

TOM MORRISON: Mr. Chairman, Commissioners, when I first reviewed this proposal, the first thing I looked at is the well log. That's the most important information we have. It tells us what the well-driller found when he drilled that well. The well-driller indicated that the well only yielded between 2.5 and 3 gallons per minute. Based upon that, I really had serious concerns about this development. Well yields typically decline with time. Serving five homes with a three-gallon per minute well is pretty marginal.

Having to come up with an estimate of how long this well is going to last is very uncertain. All I know for sure is the well yields are going to decline and it's going to be very uncertain whether or not how long this well will be able to supply water in the area. Other wells in the area have problems. We have a well southeast of Mr. Garcia and the well record indicates that well can only produce a quarter of a gallon per minute.

The consultant has made statements that we have a really good aquifer that begins at 93 feet and is several hundred feet thick. Well, when you look at the records, we see wells out there which are 300 feet deep, 500 feet deep. We even have one in the area that's 900 feet deep. Why would anyone want to drill a well 900 feet deep if the depth of the aquifer was only 93 feet? It doesn't make sense. People out there really have a problem and we're really concerned about the area.

I'd like to clarify one statement. When we looked at this proposal, our main interest was whether or not this well had a 100-year supply. We didn't look at the off-site effects. Our main concern was the Santa Fe County Land Development Code, of whether or not they followed the procedures and whether or not they had a 100-year supply. Mr. Sullivan, thank you very much for your comments. They were right on the mark. There is some vagueness in the Code and how you do the calculations. I've been doing these for many years. I've been reviewing subdivision proposals for 23 years. And it always comes down to the well, even though you have procedures, you've got to look at things on a case-by-case evaluation.

You need to have the well-driller's information taken into account. That's the most important information. We're happy to help you. We're happy to be your consultant and I feel that Santa Fe County has some of the best regulations in the state when it comes to dealing with subdivisions. Thank you.

CHAIRMAN DURAN: Thank you. Is the appellant here? Is there anything you would like to address the Commission about? Please step forward and state your name for the record.

[Duly sworn, Jack Maruska testified as follows:]

JACK MARUSKA: My name is Jack Maruska. I'm here one more time to request that the Commission either rescind or reverse the decision of the Land Use

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Administrator in the summer of 2001 which permitted the subdivision request of Mr. Garcia, based on the information you've heard tonight and other information that you will hear from other neighbors who are in the audience, several of them, at least ten, and other professional witnesses.

And that's the basis, the basis of my request is that there is no water proved. And the neighbors there who I represent, I guess are all subject to negative impacts on our wells if this subdivision is granted. That's all I have to say.

CHAIRMAN DURAN: I have a question, sir. Have you given any thoughts of maybe something less than five lots?

MR. MARUSKA: Well, since you brought it up, I'll make a mention of it. Well, first of all, to answer your question, I'm not in a position to speak for the rest of my neighbors on any kind of a compromise there, nor do I have the authority, I believe, legally, to accept any kind of compromise. But I will make note of something. On May 18, 1999, when the former Land Use Administrator, Diana Lucero denied Mr. Garcia the first time, she was gracious enough to offer him a two-lot split at that time, even though the water had not been proven at that time and is even worse now that it was then.

Mr. Garcia rejected that offer, that gracious offer, which I'm not even sure she had the authority to do or to make, and basically told her according to her discussion with me after the fact, that, Hey, if I don't get all five lots I don't want anything. And sooner or later I'll get what I want. Now, that's pretty arrogant. And I think that is a matter or record. That's in a letter from Diana Lucero to Mr. Garcia.[Exhibit 1] So I think to discuss a compromise at this point is not realistic and it's not appropriate because it has been demonstrated several times over by a number of professionals who have been doing this work for ten, fifteen, twenty years, that the water cannot be proven.

There is no compromise here. You compromise based on what? Because somebody is a nice guy? No. You have to deal with the facts, and the facts are the water has not been proven. And if this Commission were to approve this, and override all the logical and correct information, you would be causing a greater problem for all the neighbors and the people who may purchase the property that Mr. Garcia is going to sell and provide water for if there is any. So that's about it. That's how I feel.

CHAIRMAN DURAN: Okay. Thank you very much. Is Mr. Garcia here? Is there anything you'd like to add to the record? Please step forward. State your name for the record and let the County Clerk swear you in.

[Duly sworn, John Paul Garcia testified as follows:]

JOHN PAUL GARCIA: I don't recall getting a letter from Diane saying that they were going to grant me a lot split, divide the land in half, because I would have taken that and then I would have proved water on the other half and would have tried to continue working with the County and the Code to further develop this piece of property. I've done everything to the letter of the law so far, under the guidance of the County staff. And all these other things that are coming up tonight is all new to me. I never seen it in writing. I never seen it.

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CHAIRMAN DURAN: Is there anything else you'd like to say, sir?

MR. GARCIA: Not right now, unless you guys have any questions.

CHAIRMAN DURAN: I have one question. What would you think of something less than five lots?

MR. GARCIA: Excuse me, sir?

CHAIRMAN DURAN: What would you think of something less than five 2.5-acre lots?

MR. GARCIA: I've tried that. I've tried working with the County staff in trying to get something less than five and work it on down.

CHAIRMAN DURAN: You've worked on it. What's the minimum you've worked on them? Is a two-lot subdivision something you would consider?

MR. GARCIA: Well, I had considered it at one time. And we had worked on it and it was still denied. But I was never given any real reason as to why.

CHAIRMAN DURAN: Any questions of the applicant? Thank you, sir. It's a public hearing. For the—

MR. GARCIA: I do have a consultant here that would be of further assistance to myself.

CHAIRMAN DURAN: Jim, did you want to add anything to the record?

[Duly sworn, Jim Siebert testified as follows:]

JIM SIEBERT: My name is Jim Siebert. My address is 915 Mercer, Santa Fe. We are here to provide testimony along with Clay Kilmer, who is the hydrologist that prepared the study. I don't know if now would be an appropriate time to make that presentation or—

CHAIRMAN DURAN: This is your time to state your case.

MR. SIEBERT: What I'd like to do is begin by handing out a report and I think you may have gotten this report in anticipation of this meeting.[Exhibit 2] It was prepared by Clay Kilmer that detailed the studies that he has gone through to prepare the hydrology report and information associated with the well.

CHAIRMAN DURAN: Jim, we are not hydrologists here so we rely on our staff to make recommendations. So I'm going to give you five minutes. That's about the same number of minutes that the appellant had, and then we need to move into the public hearing portion of it.

MR. SIEBERT: I wonder if you would object to giving the document to the recorder and the County Clerk.

CHAIRMAN DURAN: No. Giving them the document? What document?

MR. SIEBERT: The document prepared by Clay Kilmer, the hydrologist that kind of gives the background information on the hydrologic report.

CHAIRMAN DURAN: Yes, for the record. Sure. And if you could just keep your comments—

MR. SIEBERT: Clay is going to give a brief presentation on what's contained in that document.

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CHAIRMAN DURAN: Okay. Good. Please step forward. State your name for the record and let the County Clerk swear you in.

[Duly sworn, Clay Kilmer testified as follows:]

CLAY KILMER: My name's Clay Kilmer. Mr. Chairman and Commissioners, we appreciate the opportunity to be able to deliver these comments to you. I understand we've got five minutes. Is that correct?

CHAIRMAN DURAN: Yes. Unless charting new territory, we'll give you more time but again, we are not hydrologists here and we rely on our staff to make recommendations so please don't confuse us.

MR. KILMER: Okay, we'll try to do this real quickly because I understand hydrology is kind of a boring subject and believe me, I've put whole roomfuls of people into catatonic fits with this stuff, but I'll try to rush through it. Basically, I want to just summarize the efforts that Mr. Garcia has gone to to demonstrate water availability on his property, and one of the things I want to set the record straight on right away is that Mr. Morrison with the State Engineer's Office commented that the Garcia application included a proposal to supply five individual dwellings with one well. And that's not the case.

The application was to drill the one demonstration well, which is allowed in the Code, to allow him to demonstrate that similar conditions on the rest of his 12.5 acres would allow others to drill additional wells to get the balance of supply for the other four homes. Basically, the well was drilled in January of 1998. It was advanced to a depth of 300 feet where they drilled through the Tesuque/Ancha Aquifer system and spudded into volcanic rock, which is dense and generally less water-bearing. The standing water level on completion was about 95 feet below ground level.

So they basically penetrated 200 feet of saturated Ancha at that location. Since March 1998, Mr. Garcia has performed four different pumping tests on the well and this is—the first pumping test was performed in March of 1998 and he produced over a period of three days about 18,000 gallons and that's equivalent to a 72-day supply for a single dwelling. After pumping the well for three days, he turned the pump off and the water level returned to pre-pumping conditions in less than one day.

The then County Hydrologist, Mr. Jack Frost, indicated some skepticism over the performance of the test. He didn't really like the way the draw-down curve was so he asked that the test be reperformed. In September 1998 a more vigorous test was performed where the well produced 27,000 gallons over a period of about five days, and that's equivalent to a 108-day supply for a single dwelling. Again, although there was a lot of water level draw down in the well, which is not uncommon for the Tesuque formation, the water level recovered in one day or less after being pumped for multiple days.

Again, another pumping test was run almost immediately thereafter during which 30,000 gallons were pumped over a seven-day period. That's equivalent to a four-month supply for a single dwelling. When he turned the pump off, the water level came back to pre-pumping conditions in about a day.

Since Mr. Frost has vacated the County Hydrologist position, another test has been

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run in consultation with Ms. Yuhas, the new County Hydrologist in November of 2000. During this test the well produced 14,400 gallons per day, which is equivalent to a 58-day supply for a single dwelling. Again, the water level recovered in less than one day after the pump was turned off.

One of the comments that has been made is that during the first three tests the well would sustain a yield of over three gallons a minute and it's true that the well would not produce three gallons a minute during the latest test. It produced about two gallons a minute, the production rate was reduced to about two gallons a minute late in the test. Still the well, the draw-down plot didn't yield any indication that the well was in danger of going dry.

It's been suggested by several folks that the reduction in production of the well basically is the result of reduction in the aquifer's capability and regional water level decline and we don't concur with that statement. We basically came back out and we measured the water level in the well again just a few weeks ago and we determined that the water level is within a couple of feet of where it was when it was drilled four years ago. And of course two feet in water level fluctuation is certainly not unexpected due to seasonal variation and I'll introduce some information to show you why that's reasonable.

Basically, the argument has been made that a three-gallon or even a two-gallon a minute a well is not adequate for a domestic dwelling and I really disagree with that statement. Now, I know that two or three gallons a minute is not optimum but people routinely overcome modest well yields by having storage. In fact the City of Albuquerque overcomes relatively modest well yield. They have wells that make several thousand gallons per minute, but if you take into average across the whole city they're using about 100 wells, the average well yield per dwelling in Albuquerque is about 1.25 gallons per minute. So they're overcoming their sluggish wells with storage. They've got a lot of people hooked up to wells that are prolific producers and storage is a perfectly acceptable strategy for making sure that you can meet your peak demands.

The real crux of the argument, I think, or the disagreement between myself and others and the State Engineer as well as the former and I guess now the present County Hydrologist has to do with specific yield. The State Engineer Office's memo chose to set very low values for specific yield and one of the things I think we ought to do, and I'll talk about the first image here, the specific yield is not really a terribly difficult thing to understand. Basically, this diagram shows that if you have a certain amount of saturated rock which is below the standing water level in a saturated aquifer or water-bearing zone, if you lower the water level enough to dewater one cubic foot of rock and what comes out is one-tenth of a cubic foot of water, then the specific yield for that particular rock is ten percent.

Now, the USGS has done some work both regionally and across, basically around the world and they also have a publication or two for right here in this area, the Tesuque Aquifer, and the specific yield that the USGS likes to use for the Tesuque Aquifer is fifteen percent. And the USGS, or the standard value that's set forth in the Santa Fe County

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Code, the Land Development Code, is fifteen percent for the Basin Fringe area. One of the things that we wanted to do to be conservative and to show that we were being conservative in this analysis was, in the calculation of the water in storage, we used the value of only 7.5 percent. And I think this shows a fair degree of conservatism. It's not like we're trying to split hairs with this quantity.

So, I want to introduce a couple more images if I might. This is just a photocopy of a report that was composed by Glen Hearne in 1980 for the United States Geological Survey entitled "Mathematical Model of the Tesuque Aquifer Underlying the Pojoaque River Basin and Vicinity, New Mexico." Basically, this report treats several aquifer parameters including specific yield and the area of investigation for this report does include Mr. Garcia's property. This is just another photocopy of a couple of pages out of the Hearne Report.

One of the things I want you to pay real close attention to is that Hearne acknowledged that there is some variability in the Tesuque Aquifer. There's some silty zones, there's some clayey zones, there's sandy zones, and what Hearne said, and this is not based on supposition but this is actually based on borings that were made and laboratory analysis of specific yield from samples that were taken out of the Tesuque Aquifer. He said, Being an interbedded group of sands, silts, and clays, the average specific yield of the Tesuque Aquifer system is expected to be somewhere in the range of 10 percent to 20 percent.

And then he's got a Table One that sets forth a lower and upper plausible limit of specific yield and the most likely value. The most likely value is 15 percent. He says the lowest it could possibly be is 10 percent and the highest it could possibly be is 20 percent. In our report, we used 7.5 percent because we wanted to be conservative.

In the State Engineer's analysis of the well log on Mr. Garcia's property they chose to disregard the majority of the saturated section that Mr. Garcia's well penetrated and when you use the average, if you take the average or the weighted average specific yield that they use in their analysis, it was about two percent.

This is a photocopy of a table that's right out of your Santa Fe County Land Development Code, Appendix A, and it just sets forth a standard specific yield value of 15 percent for the Basin Fringe area, which is where Mr. Garcia's well is located.

I want to try and tie in the information we got from Mr. Garcia's well log to kind of a regional geology situation. This map here is a geologic map. It shows, here's the Espinazo volcanics down here to the left. This is North 14 and right here is the intersection of 14 and the road that goes by Lone Butte Store. Right over here is Mr. Garcia's well. And we selected a couple of deep wells in the area that fully penetrated the saturated Tesuque section there. So we're going to show you a cross section that goes from southwest to northeast across that map.

And basically, the State Engineer's analysis indicated that out of the over 200-foot saturated section, the Tesuque Formation, that their calculation of water in storage really neglected the upper 175 feet of saturation. In other words, they only used about 30 foot of

saturation. The rest of the entire section they assumed was only zero percent void ratio.

COMMISSIONER SULLIVAN: Mr. Chairman, just one quick question, Mr. Kilmer. In the—while you have that picture there—in terms of where the water is in that saturated zone, where did the driller's log peg the water to be? Where did the driller find the water?

MR. KILMER: Mr. Chairman, Commissioner Sullivan, the driller's log indicated that the static water level in the well was about 92.75 feet below grade, and the well was drilled with an air-foam mixture. In other words, as they're circulating medium they used high volume air and a mixture of soap and water to keep the hole clear of cuttings. And so as they were drilling the well produced, there was at least a small amount of foam and water coming out that they were actually injecting in the well and I believe they picked up, their log indicated that they started picking up production that they could notice over the amount of water that was being circulated to keep the hole clean, at about 230 feet.

COMMISSIONER SULLIVAN: And what was the total depth of the drill?

MR. KILMER: Mr. Chairman, Commissioner Sullivan, the total depth of the well was 300 feet. This is the Garcia well right here and it reached total depth in the Espinaso volcanics at about 300 feet.

COMMISSIONER SULLIVAN: So about 70 feet then is what the driller came up with, with the difference where the water was, the difference between 230 and 300? Or was there water all the way down to the 300?

MR. KILMER: There's saturated Ancha and Tesuque sediments starting at 92.75 feet and going all the way down into the volcanics. So the saturated thickness is 300 feet, excuse me, is 200 feet.

COMMISSIONER SULLIVAN: I understand I think that's how your calculation was done. I was just trying to get where the driller pegged the water to be. Did the driller say there was 200 feet of water?

MR. KILMER: Yes.

COMMISSIONER SULLIVAN: In the drill logs. Okay. Go ahead.

MR. KILMER: I've superimposed a nearby neighbor's well that's I think approximately 400 feet away from Mr. Garcia's well. That's this neighbor's well that's in red. It's permit RG-50-757. That well's completed at a depth of 120 feet and produces, according to the driller's record, ten gallons per minute. And I guess our question for the State Engineer is that if this section up here, this entire section of 175 feet basically has no water in storage, then our question is where's that well's water coming from?

I'd like to go ahead and complete my analysis if you please.

COMMISSIONER SULLIVAN: Mr. Kilmer you have about one to two minutes left.

MR. KILMER: One of the things that's been alleged and not really supported very well by both the State Engineer's Office and the County Hydrologist is the situation of regional water table decline. This upper diagram here, this graph, is

something that was transmitted to me by former County Hydrologist Jack Frost. And Mr. Frost was using this hydrograph, this is basically the water levels, a plot of water level against time in a nearby well in the Turquoise Trail Subdivision and on the left axis is the depth of water increasing as you go down so that it basically show the water level. When the graph plot goes up then the water level is going up and when the graph goes down then the water level goes down.

One of the assertions that was made by Mr. Frost was that water levels in this well show sustained regional decline. And while I don't argue that they may be some sustained regional decline in the area, I think the hydrograph in this well is really more indicative of seasonal variation. The lower plot is a—and of course again, this record goes from 1961 to 1996. I pulled up some information from the most complete and most nearby National Weather Service station at Stanley, New Mexico and basically this plot shows the amount of winter precipitation that fell every year between 1961 and about 1998 and this plot shows that again, the winter precipitation that's most likely to make a contribution to groundwater storage.

And these plots look very similar. You have basically a trend going up into the late 70s starting from 1960 going up into the late 70s and then from there you have a decline in the amount of precipitation that's fallen. I think it's real hard to attribute the water level fluctuation in this Ramirez well to anything more than seasonal variation and climate. But to be conservative, our analysis originally indicated, and we just drew a plot through this well, we used a different hydrograph but got similar results.

CHAIRMAN DURAN: Excuse me sir, your five minutes has now turned into fifteen. How much more time do you think you're going to need?

MR. KILMER: Sir, I'm pretty much done. I just wanted to show by this green line to show that we did project regional water table decline and its effect on the production of this well and the conclusion is that regional water table decline will not, will not seriously jeopardize the water availability for this well. And I'll conclude my delivery with those remarks.

CHAIRMAN DURAN: Are there any questions of the applicant? I'm sorry, sir. What was your name?

MR. KILMER: Clay Kilmer.

CHAIRMAN DURAN: Any questions of Mr. Kilmer?

MR. SIEBERT: Just to be real brief, Mr. Chairman, Commissioners, the staff talked about the discretion to take a look at the issue of the report from a regional standpoint, from a regional basis. I reviewed the Code. I didn't find that that discretion exists within the present Land Development Code. We take the position that the hydrology report was prepared in conformance and to the letter of the law of the County regulations and County Code and we feel that Mr. Kilmer has proved that there is an adequate water supply for these five lots.

There's been some reference to the fact that there is dry holes and that the water wells have been declining in the area. If that is the case, the consulting hydrologist, Mr.

Kilmer never received any information regarding that fact and I think you can see from this presentation that he did what he could, made his case regarding his ability to prove up water.

The other issue is what are the lot sizes in the area and what I've done is I took a picture of the County Assessor's records, and what this indicates is that there's a whole variety of lots in this same area. Some ranging from 1.25 acres to 2.5 acres to 3 acres in size, and I'll hand that out.

CHAIRMAN DURAN: Are you through, Jim? Thank you. This is a public hearing. We're going to hear people that are for or against this subdivision and because of the time, I'm going to limit everyone to three minutes unless you really have something pressing that needs to be said. Sir, you've already spoken. Okay.

MR. MORRISON: My name is Tom Morrison and I am chief of the Hydrology Bureau. The main issue which I was talking about before is what does the well log tell us. And Mr. Sullivan asked Mr. Kilmer about what the well driller encountered. How much aquifer was really present? And if I may do so I'd like to hand out the well log for Mr. Garcia's well. The well log is very important. Again, it's what the well driller encountered when he drilled the well. About midway down the paper is Section 2, which lists the principle water-bearing strata. This is where the water is coming from.

In this table, the well driller lists that the water-bearing strata was encountered between 230 and 260 feet. It was 30 feet thick, it was composed of sand and gravel, and it could yield 2.5 to 3 gallons per minute. Because the well is so low-yielding, I didn't want to assume that anything above that contained water. If the well driller thought that it contained water he would have probably indicated it. Also, if that upper formation contained water we'd probably have a much shallower well. It's expensive to drill wells deep. You don't do it for the fun of it; you do it because you need water.

Apparently they had to drill down 230 feet to get the water. So that's the main rationale behind our approach. We followed what the well log showed and there could be water above this but apparently the well driller didn't think it was that substantial to include in his well log. And a low-yielding well is proof that we do not have the great aquifer that the consultant would like us to believe out there. Thank you. Any questions?

COMMISSIONER TRUJILLO: I'd like to ask a question. What's your future policy on issuing well permits in that area based on all this information that you've provided us and the studies that you've done? Are you going to continue to issue well permits in that area?

MR. MORRISON: State law requires us to issue domestic well permits. I have recently participated in a project where we developed new base and guidelines for the Estancia Basin, a portion of which is in Santa Fe County. And in those guidelines, they're used for water right reviews, and they also address domestic wells. We've identified areas that are called critical management areas, usually the areas that probably this property would fit well into. The areas in which the well declines are too high. We have a possibility of really low-yielding wells. And in those areas we're recommending that

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domestic wells be cut back to a certain amount, no longer the three acre-feet, and that all domestic wells be metered.

There was a bill that was introduced to the legislature to provide the State Engineer more control over domestic wells and unfortunately that was not passed. That would have given the State Engineer more control over domestic wells. We're really concerned about domestic wells in areas like La Cienega Springs where those wells can have a significant effect on spring flows and other wells.

COMMISSIONER TRUJILLO: So essentially, the state law makes your position on this lot split bogus because if somebody, five people go and apply for well permits, you're going to give them to them.

MR. MORRISON: Yes, the only—you're correct. Our only responsibility is through the Subdivision Act that we were requested by Santa Fe County to review this to see whether it conformed with your regulations and whether or not they had a 100-year supply. That's the only other additional level of review that you can have, and it's a really good additional review because state law requires us to issue these permits but the County can have a great influence on how many domestic wells you really allow in the County.

CHAIRMAN DURAN: I have two questions if you could stay. I need to ask staff, Katherine, the first one. Was the plan to allow five wells to be drilled on each one of these lots?

MS. YUHAS: Mr. Chairman, what I understood when I first looked at this was that they were going to drill one more well and they would have two lots on one well and three on the other.

CHAIRMAN DURAN: So three houses would be sharing a well producing 2.5 to 3 gallons per minute.

MS. YUHAS: Yes.

CHAIRMAN DURAN: Okay, and Mr. Morrison, what is your assessment on that? Your professional opinion on 2.5 to 3 gallons per minute providing water for say three houses?

MR. MORRISON: I don't think it's a very reasonable approach. When we follow the County procedures we do not indicate a sufficient water supply to justify that level of density. The option is available to the subdivider to drill another well, submit more test data to demonstrate a 100-year supply for more than one parcel. Right now, this one well does not have more than a 100-year supply for parcels which are less than seven acres in size.

CHAIRMAN DURAN: Okay. Thank you. Then I just have one more question for Mr. Garcia. Is your mailing address P.O. 16452? Thank you. Okay. It's a public hearing. Would the first speaker please step forward and state your name for the record?

COMMISSIONER GONZALES: Mr. Chairman, could we make available to Mr. Garcia the letters that were passed to us by the staff? Okay, so he does have it? And the appellant, you already have this, right, Mr. Maruska? You have it? Okay, thank

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you.

CHAIRMAN DURAN: How many of you out there would like to address the Commission on this issue? Why don't you all stand and let the County Clerk swear you in please. And when you come up to the podium just state that you have been sworn in.

[Duly sworn, Janet McVickar testified as follows:]

JANET MCVICKAR: My name is Janet McVickar. I live at 17 Alondra Lane. My property is located probably 100 meters, or 100 feet north of Mr. Garcia's well. I've prepared a number of comments to prepare to you today and since the various people before me have expressed a number of them I will reduce my comments to a very few. Let me just give a little bit of background as to what I have done in the interim since the last meeting.

I met with a hydrologist for my own personal interest to find some resolution in the widely varying data presented in all of the memos, reports and so forth that have been generated as a result of this case. This individual, Mr. Merlin Wheeler, who is a retired hydrologist from Los Alamos has prepared a statement which I have faxed to the Commissioners and I will give to the Clerk. I am not going to read that. It would be way too much. However, I would like to bring up a single point.

Before I do that, however, I'd simply like to state that I am opposed to the subdivision of this lot on the grounds that the water appears to be insufficient. I would simply like to bring up one point in Mr. Wheeler's analysis of all of the data that have been presented on this case to date. Let me just say briefly that he has constructed a table that reduces all of those data to a very simple small table about yea-big which is in the material that I faxed to the Commissioners.

If I could just read this section to you, assuming some facts have already been presented. As is apparent from the values for required acreage, the lot size proposed by the developer can only be justified by the use of a proposed withdrawal rate of .25 acre-feet a year, which is approximately 60 gallons a day. Without substantial water conservation measures, such a withdrawal rate is unrealistic. Typical domestic use is in the range of 80 gallons per day, and for a family of three, that would be approximately 250 gallons per day or one acre-foot per year. The latter value I remind you is the default standard presented by the County Code and supported by the State Engineers. And it's also interesting to note that the withdrawal rate used in the analysis presented in Kilmer's memo of 11-19-2000 assumes a withdrawal rate of 250 gallons a day.

Now this is going to be the crux of what I have to say here. The above-mentioned memo of Kilmer's presented an analysis of the long-term draw-down resulting from the pumping from the completed Garcia well using a computational model referred to as a Theus equation. I have performed upward of 100 analyses of aquifer performances using that equation and I'm well familiar with its value and limitations. The equation is theoretical in nature and assumes idealized conditions that rarely occur in nature. Specifically, it applies to the fully penetrating well in a confined aquifer that is both

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homogeneous and isotropic. He understands those terms better than I. Any departure from these idealized conditions affects the outcome of the calculations. These assumptions of the idealized conditions are not acknowledged in the subject report, 11-19-2000, and in particular the property of isotropy is not addressed. A table presented by Kilmer in April of '99 prepared by the USGS reports expected values of anisotropy ranging from .001 to .01. This means the aquifer is from 100 to 1000 times more permeable in the horizontal direction than in the vertical. Mr. Kilmer uses specific yield values presented in that table to justify his preferred value for that parameter, but conveniently neglects the anisotropy values. In addition, the assumption of the fully penetrating well is violated by the Garcia well, which is screened over less than half its depth. In other words, the well isn't screened so that it's going to allow any other water in than where the water-bearing layer was encountered. The departure of the Garcia well from the idealized values required by the Theus equation will result in greater actual draw-down in the Garcia well than that presented in the Kilmer 2000 memo.

And that's really all I have to say. It's technical. I'm saying it for the record. I would also like to say that I have also examined the well log extensively and concur with the State Engineer's Office that the log does not represent water anywhere but at the level at which the driller encountered the water. That's all I have to say. Thank you.

COMMISSIONER GONZALES: Have you noticed a decline in your well production?

MS. MCVICKAR: I can honestly say that I have not tested that at this point in time.

COMMISSIONER GONZALES: Thank you

[Previously sworn, Chuck Ferran testified as follows:]

CHUCK FERRAN: My name is Chuck Ferran. I live at 35 Alondra Lane, which on your diagrams is just north, I border John Paul's north border with a ten-acre lot there. I'm here to oppose the land split as I did at the last meeting. Councilor's Gonzales' last question, have you noticed a decrease in your well—two and half years ago when we purchased this property the property did not sell because of the already decreasing water there. Our well only produces—I can't even give you the gallons per minute. It's down, it's rate to two gallons a minute because after 30 minutes of pumping my well goes dry. And that's documented by Lujan Drilling, which at that time I had to install \$5,000 worth of at least it's a 1500 gallon holding tank with booster pumps and special electronics to shut my well off after it starts running dry, replenishing the tank. So yes, there is, I can see the decrease in the amount of water that is available.

The opinions of all the experts, that speaks for itself and I'm not a hydrologist. I'm a landscaper. I've sat on the City commission and I've sat here and I rewrote the ordinances for drought tolerant plants, drought tolerant landscaping. I rewrote the irrigation ordinance in Santa Fe. According to Mr. Garcia's consultant, as long as we look at the figures different, we're all not in a drought. So it's a matter of perspective. My perspective is very close. I live right next door.

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There was a well drilled a year and half ago just to the northeast of Mr. Garcia's well that went 320 feet down and only produced two gallons a minute. And that's documented from Mr. Lujan drilling because Lujan drilled it on my recommendations to the landowner because he did a great job.

So here I am again. We're opposing this land split. The water is not there. My family and I saved our money to buy this place and it's worth nothing if I don't have any water. Thank you.

CHAIRMAN DURAN: Thank you, sir. Next speaker please.

[Previously sworn, Hugh Nazor testified as follows:]

HUGH NAZOR: Hugh Nazor, 263 Camino Los Abuelos, and I have been sworn in. Water is so important an issue here that when there's any doubt, don't do it. Water isn't something out here you can play with. I hope you're more concerned with doing things the right way for the health and safety of the public than you are concerned with how you've done them for the last five years. If the way you've done them for the last five years proves to be less than the best way, I hope you change to a better way. I have tremendous respect for the State Engineer's Office and their neutrality in situations such as this. It's hard to find a neutral person in a situation such as this. I think you have them in the State Engineer's Office.

I'd like to state just two more quick things. One, at least two of you gentlemen are well award of the San Marcos Association's desire to have a planning committee in this area. Water concerns is one of the primary reasons. You can begin to see some of the water concerns in our area. Two, I'd like to put this just slightly in perspective. A couple of speakers ago mentioned that the Code here uses an average of one acre-foot per year per dwelling. That's true. And the Code says that to support one acre-foot per year per dwelling in the Basin Fringe area, the minimum lot size is 50 acres. To get down to divide that to 25 and divide that again, you have a quarter acre-foot, and to do that you have to meet various requirements and minimum water use and low flow devices and prove water availability. The lot under consideration is already at 12.5 acres.

To get down smaller than that, the law says you have to prove that the water lies there in the ground, not that it can be recharged. That the water is now in the ground that you would need for the next 100 years. The overwhelming weight of the evidence says it's not. You've asked various questions about the ordinance and it says quite simply that the hydrologist report shall be reviewed by the County Hydrologist who shall recommend to the Code administrator whether or not the value—that is the water deemed to be available—is reasonable, and if not, shall recommend the value appropriate for use in determining the minimum lot size.

It goes on to say the actual value shall be based on the information submitted by the applicant, by the County Hydrologist, who has the right to bring her own information, and by others submitting information. Now the implementation of the others submitting information isn't spelled out. It could presumably include neighbors. It most certainly would presume to include the State Engineer. So I see nothing wrong and everything right in seeking such information. In case you haven't figured it out I'm in favor of upholding the appellant's request.

CHAIRMAN DURAN: Next speaker please.

[Previously sworn, Water Wait testified as follows:]

WALTER WAIT: Mr. Chairman, members of the Commission, my name is Walter Wait. I live at 4548 Bonanza Creek Road in Santa Fe. I'm here tonight representing the San Marcos Neighborhood Association. Perhaps the most important thing that I can add to the discussion at this time is to remind the Commission that we're dealing with an appeal. An appeal of a CDRC administrative decision. On November 13th, the appellant offered the Commission evidence that the CDRC should not have granted permission to subdivide, since the applicant did not demonstrate a 100-year water supply.

While this view was not supported by the County's Hydrologist, it was supported by the State Engineer's Office and the Commission tabled the appeal so that the County Hydrologist and the State Engineer could get together in hopes that they might be able to come together to offer a compromise or an agreement. Your packet includes the State Engineer's findings and you've heard from representatives of that office and the County Hydrologist has concurred with the State Hydrologist's opinion.

This would mean that after review of the evidence, both the County and State Hydrologists, your experts, do not accept the notion that there is sufficient water underneath the property in question to permit additional subdivision. If this is in fact the case, then the appeal should be granted and the CDRC decision overturned. The San Marcos Neighborhood Association supports the State Engineer's findings in this matter.

Let us be perfectly clear. We feel that the approval for a subdivision of a current 12.6-acre tract must be reversed because the original applicant has not clearly demonstrated sufficient water to meet the County Land Use Code requirements. Thank you.

CHAIRMAN DURAN: Thank you, sir. Anyone else out there that would like to address the Commission?

[Previously sworn, Jerry Reynolds testified as follows:]

JERRY REYNOLDS: Good evening. My name is Jerry Reynolds. I have been sworn in. I'm at 128 Shenandoah Trail, directly across Shenandoah Trail from Mr. Garcia, to the south. I agree with what everybody said about the water problems and I want to go on record as saying I oppose the subdivision. There's a couple things that haven't been mentioned yet. Five families on that area would also mean five septic systems. I'm not sure exactly what the Code is now but when I put my septic system in '91, I had to prove to them that I had an alternate leach field area in case the one was plugged up. And I'm not sure if that can be done on those small lots that Mr. Garcia is proposing.

The other point is, it's a precedent that might be set if this subdivision is granted. My information is it's that there are at least two other people who are watching to see what's going on here and who are intending to do the same thing. Now that surely would be a strain on the water system if everybody in the surrounding area, based on the precedent of Mr. Garcia's subdivision intended and started doing the same thing. Those are my two main concerns, besides the water concern, is the additional septic systems and the precedent being set by allowing people to subdivide these areas into such small plots. Thank you very much.

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CHAIRMAN DURAN: Thank you sir. Anyone else out there? The County Attorney's not here?

COMMISSIONER GONZALES: Just one final question for Katherine. Just to reiterate for the record again. The issue of the 100-year water supply, that's a County Code requirement?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, that's correct.

COMMISSIONER GONZALES: And when you did, once again, your initial review prior to referring to the State Engineer's Office, the data you saw supported the 100-year water supply?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, yes. My first review concurred with Mr. Kilmer's findings.

COMMISSIONER GONZALES: And subsequently when the State Engineer reviewed it in terms of what was happening regionally or at least in the area, you determined, you as our representative in this area has determined that there is not a 100-year water supply.

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, that's correct. It's certainly not comfortable for me to stand here and say that I'd like to change my opinion but it's better for me to be uncomfortable than for people to run out of water.

COMMISSIONER GONZALES: Well, let me commend you for being able to stand up and change your opinion when you need to. I'd rather have you do that also if you feel that it's important to do it. So there is not, in your opinion a 100-year water supply.

MS. YUHAS: That is correct.

COMMISSIONER GONZALES: So therefore, that part of the Code is not, in your opinion and to Mr. Dominguez's statement earlier, does not meet—the Code is not met.

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, that is correct. That portion of the Code has not been fulfilled.

COMMISSIONER GONZALES: So if the applicant wanted to go a route in getting the five, would they have to go the variance process?

MS. YUHAS: Mr. Chairman, Commissioner Gonzales, yes. That's right.

COMMISSIONER GONZALES: Thank you.

COMMISSIONER TRUJILLO: So, Mr. Chairman, that means, because you look at the water supply from a regional standpoint, from a regional perspective, I speculate then that no further development will take place in that area.

MS. YUHAS: Mr. Chairman, Commissioner Trujillo, not only do we look at the region, but we look at the region in the context of what each individual well is producing. So I would not like to speak what anyone might do in the future in terms of their wells. But certainly, anything that comes in in this area is going to be looked at much more carefully.

COMMISSIONER TRUJILLO: It would concern me that this individual be denied and then we get five individual lots come in and get approved by the State Engineer and by Santa Fe County which will essentially have the same impact on the water table that this development potentially can have. We should not speak through both sides of our mouth. If we're concerned with the water, we should be very meticulous in our scrutiny of any

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development that takes place in that area.

MS. YUHAS: I think you're absolutely correct about that.

CHAIRMAN DURAN: Okay, Chris, I had a question. What are our obligations here? Should I allow the appellant to have the last word or the applicant? Or can I just go to the vote?

MR. GRAESER: Mr. Chairman, if everyone's had a chance to respond to all the major points raised I think you can go to a motion. If the new points were raised after the appellant gave his presentation, our general manner of doing business is to allow him a short time to respond to those new points that were raised. Because it is, he paid his money to get up here and make his presentation.

CHAIRMAN DURAN: Okay. So what would you like for me to do? What's the pleasure of the Board?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I think, based on the information and recommendations of the staff and certainly of the State Engineer, who we thank for spending the time here this evening, I would recommend to deny the application to uphold the appellant's appeal. Granting the appeal. Is that stated correctly?

MR. GRAESER: Mr. Chairman, Commissioner Sullivan, yes, to clarify, your motion is to grant the appeal, which would overturn the decision to grant the application and deny the subdivision in effect.

COMMISSIONER SULLIVAN: That's my motion.

COMMISSIONER CAMPOS: Second.

COMMISSIONER GONZALES: Discussion?

CHAIRMAN DURAN: Discussion. Commissioner Sullivan, it's evenings like tonight that I'm thankful that you're an engineer who can make it through 15 minutes of testimony that was brought forward and the testimony that was brought forward by Mr. Garcia was to the issue of them trying to prove that, they were basically contradicting the State Engineer's request here. So I guess I'm looking to you as a peer in terms of what was brought forward. Do you not concur with Mr. Garcia's hydrologist and what they were presenting in terms of the technical data and the fact that it shows something different from what the State Engineer was looking at in a hydrologist? And I apologize for putting you on the spot but that's what happens when you're an engineer and understand this much better than we do.

COMMISSIONER SULLIVAN: I guess I should say that I'm not a hydrologist either. But I did read the materials that were in the packet and I did read the materials that the applicant provided ahead of time.

COMMISSIONER GONZALES: As did I, but the technical side was a little bit more difficult

COMMISSIONER SULLIVAN: And I think that, as I recall, the State Engineer did two calculations. One was based on the 30 feet of water that the log showed, by the driller, as being water-bearing strata, and I noticed in the log that was handed out that the

well was perforated from 260 to 300, so that's where they perforated the well because that's where the water was. Usually you put the perforations where you hit the water. 208856

So the well is PVC and it's perforated for 40 feet down at the bottom. Then I recall reading that there was also, the State Engineer recalculated the formula based on, I think it was about 60 feet of saturated thickness by going back through and including the strata that had sand and gravel in it, but excluding the strata that had silt in it, because silt doesn't allow water to get through it. According to the records, the material is silty sand and gravel. But sand and gravel will let water pass, to a certain extent but silt won't.

So as I recall, the second calculation was done that I saw in there taking out—assuming there was water in the sand and gravel strata but taking out the silt strata. And that calculation brought the same result that there shouldn't be any divisions. That they were still below the required acreage. So based on the State Engineer doing it twice, in two different ways, I feel comfortable that that's the right precedent to set on this lot.

COMMISSIONER GONZALES: The new technical data that Mr. Garcia's engineer brought forward is something that you didn't concur with then. That he brought forth this evening.

COMMISSIONER SULLIVAN: No, I don't say I concurred with it. I don't know whether to concur or not. I read all the materials in there and it was useful information. I recall, and of course I don't have it all in memory but I recall a comment that they made about the well dropping two and a half feet in a couple years, which is quite a drop, was not, in their judgement due to the declines in the region but was due to possible incrustation of the screens, of the slots. But I found that a little hard to believe because it's a PVC pipe and in two years, the chances of it making that big a difference between 3 gallons a minute and 2 gallons a minute—in other words it would have lost a third of its capacity in two years on a PVC screen. I just tended, looking at that to think that it just declines in the water table.

COMMISSIONER GONZALES: Thank you for your—

COMMISSIONER SULLIVAN: I'll again say I'm not a hydrologist.

CHAIRMAN DURAN: Okay, there's a motion on the table and a second.

Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

COMMISSIONER GONZALES: Mr. Chairman, I think we need to send some direction to the staff in this area to work to develop a process that will be consistent from here forward in future land splits. If there is going to be a process that we're going to the State Engineer's Office on every one of them for consultation, or that we are going to establish some minimum lot size based on what we know for future lots if any are going to be taking place. But something needs to move fairly quickly, Roman, from your office and from you Katherine, to provide direction to the Garcias as their options, and any future large landholders, if they want to come in. That way Mr. Maruska and everyone else doesn't have to go through this process every time that there's a lot split that's coming forward. But rather, based upon what we know now, I think we can have a general idea of what can be tolerated at least in the near future and that probably will provide some good

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guidance to future lot splits.

Because I know there are still large tracts of land that are left, at least 12.5-acre tracts of land, so there either needs to be, either we're going to stop this allowing the lot splits based on some data or if there will be lot splits that will be coming in based on something that we feel good with.

X. B. 2. Approval of a joint powers agreement between the City of Santa Fe and Santa Fe County establishing an urban growth area within the Two-Mile Extraterritorial Zone

ROMAN ABEYTA (Land Use Administrator): Thank you, Mr. Chairman. The property affected is Tract 2-A, 1-B, which are lands for Alvaro Z. Gallegos in Section 12, Township 16 North, Range 8 East off of Airport Road. The developer is San Clemente Apartments. The proposal includes a 44-unit affordable apartment complex known as San Clemente Apartments, located along the southern end of Calle Lucia off Airport Road. The applicant has entered into a Housing Opportunity Program agreement with the City of Santa Fe Community Services Department.

The current EZ zoning is one dwelling unit per half acre and the proposed location does not allow the densities proposed for the San Clemente Apartment Complex. The proposed urban growth area lies within the Southwest Area Master Plan. On November 5, 2001, the applicant presented its proposal to the South Central Area Neighborhood Planning Group of the Southwest Santa Fe area.

As stated, designation of an urban growth area requires adoption of a joint powers agreement between the City and County. The intent of the JPA is to allow residential growth at urban densities for commercial or other non-residential developments at urban intensities only where the infrastructure and services currently exist or can be provided by a public or private entity. Moreover, the JPA identifies who is responsible for the construction and maintenance of the infrastructure and general services. Staff requests that the BCC approve the proposed JPA. The City of Santa Fe will be responsible for providing the infrastructure needed to support this development. Thank you, Mr. Chairman.

CHAIRMAN DURAN: Roman, has the City acted on this?

MR. ABEYTA: Mr. Chairman, members of the Commission, yes. The City adopted, on November 28, the City Council approved the JPA.

CHAIRMAN DURAN: Okay. Any questions of Roman?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Just quickly, Roman, this urban growth area is a little confusing to me but it only occurs in places where City services and utilities already exist. Is that correct?

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MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, it can only be created within the Two-mile and the intent is to require that either the City or the County to designate who's going to be responsible for those services. So the City doesn't necessarily, the infrastructure doesn't necessarily need to be in place, and the City doesn't need to be the provider, but in this case they've agreed to it.

COMMISSIONER SULLIVAN: And is it in place now?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, it's my understanding that the water and sewer lines are adjacent to this property.

COMMISSIONER SULLIVAN: And the City has agreed to be the provider of those utilities.

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, that's correct. But not only the utilities. They'll also be required to provide police service, fire protection and solid waste removal, as per the JPA.

COMMISSIONER SULLIVAN: Okay. And then how—does this fit into the Southwest Area Plan?

MR. ABEYTA: Mr. Chairman, Commissioner Sullivan, I can't comment on that. I'm not sure if it does or not. We did require them though to go to that planning group and make their presentation and it's my understanding the planning group had no objections to it.

COMMISSIONER SULLIVAN: Thank you.

CHAIRMAN DURAN: So Roman, do you think that the fact that the City water and City sewer were present on this site that helped the City make the decision, or kind of guided the City in making the decision to approve it?

MR. ABEYTA: Mr. Chairman, Commissioner Duran, those are the main items needed so that probably was the driving—

CHAIRMAN DURAN: Okay. Any other questions of Roman?

COMMISSIONER GONZALES: Move for approval.

COMMISSIONER TRUJILLO: Second.

CHAIRMAN DURAN: There's a motion and a second. Any further discussion?

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: I have a problem with this type of piecemeal approach. We're in the process of trying to get a control of what's going on in the Airport Road, traffic issues, zoning, service issues. What we've created is a no-man's land where people have been approved because they get water and sewer and that's it. It's a bigger mess. We're right now, the City's trying to annex, we're looking at the Southwest Area Planning. I just don't think this is the way to go. And I would vote against it.

CHAIRMAN DURAN: I'd just like to comment real quickly. This area has been in dire need of some planning and zoning and people have been waiting for 20 years for something to happen there since that 1980 plan was adopted. I think that the fact

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that this received approval by the Southwest Planning Committee—is that what it's called?
MR. ABEYTA: Mr. Chairman, yes. It's the Southwest Santa Fe Area
Planning—

COMMISSIONER CAMPOS: We don't know that. That's an assumption.

CHAIRMAN DURAN: Assuming that they approved it that it's in line with
what they're planning. So, any other discussion? Those in favor signify by saying "aye."
[Commissioners Gonzales, Trujillo, Sullivan and Campos voted with the motion.]
Opposed? [Commissioner Campos voted against.] Motion carries.

- X. B. 3. **EZ Case #DL 01-4070. Tom and Kathy Sedillo. Tom and Kathy Sedillo request plat approval to divide 4.98 acres into two tracts. The tracts will be known as Lot 1-A (2.4916 acres) and Lot 1-B (2.4919 acres). The described property is located off Calle Estevan within Pinon Hills Subdivision, Section 25, Township 17 North, Range 8 East (Two-mile EZ District)**

CHAIRMAN DURAN: This is for deliberation only. Tell me why it isn't in the
land use public hearings portion.

MR. ABEYTA: Mr. Chairman, members of the Commission, the case was
already heard and voted on. The vote resulted in a two-two tie.

CHAIRMAN DURAN: Okay.

COMMISSIONER GONZALES: I can imagine I was probably the one out.
Mr. Chairman, my vote would be to approve the lot split.

CHAIRMAN DURAN: Okay. Thank you very much. Is that all we have
to do?

MR. GRAESER: Mr. Chairman, I believe we should take a full vote. A
motion and a vote.

COMMISSIONER GONZALES: I would move for approval of EZ Case
DL 01-4070.

COMMISSIONER TRUJILLO: Second.

CHAIRMAN DURAN: Any further discussion? There's a motion and a
second. Those in favor signify by saying "aye." [Commissioners Gonzales, Trujillo and
Duran voted with the motion.] Opposed? [Commissioners Sullivan and Duran voted
against.] Motion carries.

X. C. Public Works Department

1. Request approval of change order number one for the County Road 64-L (Richards Avenue) road improvement projects EMCO

CHAIRMAN DURAN: I thought we moved this to the back of the agenda.

COMMISSIONER GONZALES: So did I.

JAMES LUJAN (Public Works Director): Mr. Chairman, members of the Commission, before you have a change order for the amount of \$47,393. It is the difference in line items that were deducted, the difference between them and the original contract. And these are deductions from the original contract and some are changes that were made on Governor Miles intersection. And this item will be paid from the money that we collect from the City.

CHAIRMAN DURAN: Any questions of James?

COMMISSIONER CAMPOS: Mr. Lujan, in your paragraph project change order, I think it's the one that says items 3, 5, 7, 21, etc., with an increase of \$369,000. Could you explain that a little bit to me?

MR. LUJAN: These were actually—these were decreases in items from the original contract. Some items, deductions. Some of these were deductions, because in the amount, we had to change items in the plans. Some of our grades called in sections of the road were outside the right-of-way limits, so we decreased, we had to change the profile of the road because it would have landed outside the right-of-way into private property which we could not build. So some of these items had to change. Sub-grade prep was one of them, and there's a list of them on your list. That's deductions on the graph, if you see it here. And they are the items as mentioned. Each one of the items. And it is a deduction in item. A reduction in the quantity.

COMMISSIONER CAMPOS: But an increase in the price.

MR. LUJAN: No. It's a deduction. It's a reduction in the cost.

COMMISSIONER CAMPOS: You're looking at the \$369,000 increase?

COMMISSIONER SULLIVAN: I think he was looking at the one below that.

COMMISSIONER TRUJILLO: First page second paragraph.

MR. LUJAN: That's where I'm looking at. The item, if you look at this chart you can see the deductions and what they increased. And some of them were in sub-grade preparation. They changed the profile of them. But it's not an increase in cost. They balanced out is what they did in the items.

COMMISSIONER CAMPOS: I understand that they more or less balanced out. But you did have an increase in \$369,000 that you did not expect? Am I not reading this right?

MR. LUJAN: Correct. Yes.

COMMISSIONER CAMPOS: How should I be reading this? How should I read this? The \$369,000 that's rated or stated as an increase of price?

MR. LUJAN: It's an increase in some of them items, in that item of sub-grade prep, but from deductions of other items that we took off. And it's all in the PMPB, in the asphalt mix, is what increased.

CHAIRMAN DURAN: Hold it upside down. It will make more sense.

COMMISSIONER CAMPOS: Upside down. Thank you.

MR. LUJAN: It is an increase in asphalt quantity.

COMMISSIONER TRUJILLO: But it's not an increase of that number.

MR. LUJAN: No. We just changed.

COMMISSIONER TRUJILLO: It's an increase of two there.

MR. LUJAN: An increase of two.

COMMISSIONER TRUJILLO: So we know that it's not increased by \$369,000.

MR. LUJAN: Okay.

CHAIRMAN DURAN: Any other questions?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Just a clarification, James. In your background and summary. This will close out this project, will it? This change order?

MR. LUJAN: Yes sir.

COMMISSIONER SULLIVAN: And you indicate that funds came from the County as well as through the New Mexico State Highway Transportation Department and contributions from Rancho Viejo. So these monies were paid by Rancho Viejo. That's their contribution to Richards Avenue, that's cash out. There's no implication that they're going to be paid back or anything for any of this, is there?

MR. LUJAN: Refunded money? Is that what you mean, Commissioner?

COMMISSIONER SULLIVAN: Yes. This is a contribution? This is their contribution to Richards Avenue. That means—

MR. LUJAN: There's a balance left of approximately \$150,000 on the items that were cost to Rancho Viejo. We still have—striping has not been billed to the County yet. That will be an item that's taken out of there. It has not been billed by the contractor, the subcontractor for that, so there's an amount that may go back to the Rancho Viejo. We have to still work on that and I don't know the correct language.

COMMISSIONER SULLIVAN: My question wasn't about—you still have some, and eventually some monies will go back if you didn't use up all the money. Some of the monies will go back to Rancho Viejo. Is that correct?

MS. MILLER: Mr. Chairman, Commissioner Sullivan, we've actually met with Rancho Viejo concerning the balance that's remaining, taking all funds, that's the City's, the funds that Rancho Viejo that we have in escrow and also the money for, the \$170,000 from the state. And anything that is left, although we went through the items that still need to be done. We'll need a change order for the striping and we'll also need to do seeding and it's anticipated that we'll use most of that. Anything that's left on the total of

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all the funds, and especially between the County's, the state funds that we get and the money from Rancho Viejo would be funded on a proportionate basis to each entity.

COMMISSIONER SULLIVAN: Okay. Well, I was just focusing on the word contributions and the only thing that I caught on it was that in the documents that Rancho Viejo presented for the \$6 million bond issue at our last Commission meeting, one of the items in those documents was, in that \$6 million bond issue was \$1.4 million for Richards Avenue North to be completed in November 2001. And so I was a little confused if the intent was that they would be refunded this money or whether this was a part of the agreement. I see the agreement that's in the packet having to do with the capacity of Richards Avenue, the 10,000 ATD and so forth. So I was a little confused and I guess when we see that come back again that may be clarified but from what I saw in the packet before, at one point, \$4 million for this section of Richards was included in the Rancho Viejo \$6 million bond issue. And that's what I wanted to get some clarification on.

MS. MILLER: Mr. Chairman, Commissioner Sullivan, the money for this project has already been provided to the County and sits in escrow at the State Investment Pool. To my knowledge it is not something that would be refunded through a bond issue. This is separate in an improvement district, not from the one that we already approved and passed the bonds for or a future one. So I'm not—

COMMISSIONER SULLIVAN: Okay. I just wanted to clarify that because again, it hasn't been acted on by the Board but in the appendix that Rancho Viejo provided at our meeting as to where the \$6 million would come from, there was \$1.4 million for road improvements to Richards Avenue North. So I just wanted to get some clarification that somehow that doesn't apply here, that their contribution is in fact a contribution which was required as a part of the development agreement.

MS. MILLER: Yes, Commissioner Sullivan, at the moment. If there's something that comes in the future that would be different than that I'm not aware of it. But this has been completely separate of them. Any future money to my knowledge at this point and we do have the money from Rancho Viejo for this. And their developer agreement states that if there's anything left, it would be refunded to them but we're looking at a very small portion. Less than probably \$40,000 if that.

COMMISSIONER SULLIVAN: So the Commission could decide in the future to refund them the money through a bond issue, I guess, and that's what I was seeing here and wondered whether you were aware of that.

MS. MILLER: It's not something that we were intending to do and I was not aware of that and I'm not sure if it would be able to be done as far as an improvement district because that's not part of the improvement district. I don't know. I think it would have to be delineated and it would be an issue when that's brought forward.

COMMISSIONER SULLIVAN: Okay. I don't want to belabor it, just ask you to take a look at that so if and when that issue comes back again we've got a firm answer on that.

MS. MILLER: Mr. Chairman, Commissioner, we'll do that.

COMMISSIONER SULLIVAN: Mr. Chairman, I'd move for approval of the requested change order.

COMMISSIONER GONZALES: Second.

CHAIRMAN DURAN: Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries.

MR. LOPEZ: Mr. Chairman, given how late it's gotten and the fact that there's still a number of public hearings to go, I would offer that there are some of these issues that we could probably delay, but there's two or three that we've identified as time sensitive. I could let you know which ones those are and see if you want to move on with those.

CHAIRMAN DURAN: Okay.

MR. LOPEZ: We believe that there's some time sensitivity to item X. E. 4, the authorization for the capital outlay gross receipts tax. Also we'd like to get under X. F. 2, the intergovernmental agreement with the Federal Bureau of Prisons. I believe we should act on that. Mr. Graeser assures me that he should be able to get X. E. 1 done in 30 seconds or less and if not, you should go ahead and table it. Then finally we will need some time for some discussion of some executive session items, but as to when, it's to your discretion as to when we do that.

COMMISSIONER GONZALES: Mr. Chairman, in the interest of the public that's here tonight can we do the executive session at the end of the meeting? As opposed to requiring the wait longer?

CHAIRMAN DURAN: Sure. How about staff? How many people are here from staff for executive session?

MR. LOPEZ: There's a number of staff here tonight.

COMMISSIONER SULLIVAN: What about the meeting next Tuesday? That starts at 10:00 a.m. doesn't it?

MR. LOPEZ: There's a couple of issues that we probably need some direction on before the end of this week that we need to discuss at executive session. I think there's probably three staff.

COMMISSIONER GONZALES: Great.

COMMISSIONER SULLIVAN: I suggest that we do that at the end.

MR. LUJAN: Commissioner Duran had an item on Agua Fria that he wanted to bring up.

CHAIRMAN DURAN: That can wait.

COMMISSIONER SULLIVAN: Not the stop sign.

CHAIRMAN DURAN: Oh yes, where is the stop sign?

COMMISSIONER SULLIVAN: I'm sorry I said it.

CHAIRMAN DURAN: So your suggestion is then to go with the County Attorney, let him do his 30 second drill?

X. E. Matters from the County Attorney

- 1. Resolution No. 2002-21. A resolution determining reasonable notice for public meetings of the Santa Fe Board of County Commissioners, and all commissions, committees, agencies of any other policy-making bodies appointed by or acting under the authority of the Board of County Commissioners**

MR. GRASER: Thank you, Mr. Chairman. This resolution, we're required to adopt this resolution every year by the Open Meetings Act. This is in the form recommended by the Attorney General's Office. This is the same resolution we've adopted every year for the last who knows how many years. That's the end of my presentation.

CHAIRMAN DURAN: Any questions of Chris?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I need to find it. Does this set the—this sets just the notice time for the sequence of noticing. It doesn't set the time when documents should be available to the public and so forth that we've done by resolution.

MR. GRAESER: Correct, Mr. Chairman, Commissioner Sullivan. That's in the rules of order we're working on. This just tells you ten days notice for a regular meeting, three days for a special meeting, 24 hours for an emergency meeting.

COMMISSIONER SULLIVAN: So you are still working on the rules of order.

MR. GRAESER: Absolutely, Mr. Chairman.

COMMISSIONER SULLIVAN: Because I wanted to suggest that you address the issue which has been brought up recently about what amounts of time are given to public presenters and is that at the discretion of the Chair or is that the same for everybody, or—so we have something that's got some guidance there.

MR. GRAESER: Mr. Chairman, Commissioner Sullivan, I appreciate that. I've actually put something about that in the draft. I can get you another copy if you need it. Maybe I could get some feedback on that proposed regulation.

COMMISSIONER SULLIVAN: But that's rules of order. That's not—

MR. GRAESER: Correct.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: I would move for the adoption of Resolution 2002-21.

COMMISSIONER TRUJILLO: Second, Mr. Chairman.

CHAIRMAN DURAN: Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries. [Commissioner Gonzales was not present for this action.]

MR. GRAESER: Mr. Chairman, if I could request the Commission to table number 2 until next week.

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COMMISSIONER TRUJILLO: So moved.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries. [Commissioner Gonzales was not present for this action.]

MR. GRAESER: And, Mr. Chairman, on item 3, it wasn't identified by Mr. Lopez as a time sensitive issue and it may not be a time sensitive issue but I would like to point out that Mr. Schultz is up here from Albuquerque and he's been waiting on it. Oh, I'm sorry. My mistake. We did move that to the next page.

MR. LOPEZ: We moved that into the public hearings earlier. We would request action on item number 4, however, requesting authorization to publish title and general summary of an ordinance adopting a County capital outlay gross receipts tax.

X. E. 4. Request authorization to publish title and general summary of an ordinance adopting a County capital outlay gross receipts tax

CHAIRMAN DURAN: What's the pleasure of the Board?

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN DURAN: Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries. [Commissioner Gonzales was not present for this action.]

COMMISSIONER SULLIVAN: Good job on the drafting of that language, whoever did it. You didn't do it, right?

MR. GRAESER: I didn't do it.

COMMISSIONER SULLIVAN: Well, whoever did it, it sounds very concise.

MR. LOPEZ: It was the product of a lot of collaboration among staff and the public.

CHAIRMAN DURAN: So we're moving item 3 to the first on the Land Use Department items. Is that correct?

MR. GRAESER: Correct, Mr. Chairman.

MR. LOPEZ: Mr. Chairman, the only other, other than executive session, the only other time sensitive issue is item X. F. 2.

CHAIRMAN DURAN: Well, let's move to that.

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X. F. Matters from the County Manager

2. Request approval of intergovernmental agreement (IGA 0025-2) between the Federal Bureau of Prisons and Santa Fe County to house BPO adjudicated juvenile inmates at the Santa Fe County Youth Development Program operated by Cornell, Inc.

GREG PARRISH (Correctional Services Manager): Mr. Chairman, Commissioners, the contract with the BOP is set to expire on March 7th of this year. This is a renewal contract for a three-year period. The contractor, Cornell Companies has agreed to provide the services required by the Bureau of Prisons for the agreed rate of \$193.87 per offender per inmate day. And that's, we would have a three-year contract. They could adjust it after one year if they show expenses and cost increases.

CHAIRMAN DURAN: Any questions of Mr. Parrish.

COMMISSIONER CAMPOS: Mr. Parrish.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: How does this compare to last year's prices and contract?

MR. PARRISH: The contract last year, or for the past three years was \$187 and some change, Commissioner.

COMMISSIONER CAMPOS: Other than that the terms are pretty much the same?

MR. PARRISH: Yes they are.

CHAIRMAN DURAN: Any other questions of staff?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Mr. Parrish, I just divided the one value of \$193.87 per offender per inmate day into the estimate value of the agreement, which is about \$4.6 million, and that comes out to about 23,725 inmate days. Does that sound right? That's—

MR. PARRISH: They figured on an inmate day of a population of 40 per day. And take 40 times 365 times the three years that should come out to that amount.

COMMISSIONER SULLIVAN: Okay. The \$193 is per offender, per person.

MR. PARRISH: Yes. Per inmate. Yes.

COMMISSIONER SULLIVAN: It was just surprising that we had that many—I guess it shouldn't be—but that we had that many federal prisoners in the youth facility.

MR. PARRISH: It has a value of almost one half million dollars. Right now our population is at 31 though.

COMMISSIONER SULLIVAN: Thirty-one?

MR. PARRISH: Thirty-one Bureau of Prison inmates at the juvenile

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facility.

COMMISSIONER SULLIVAN: Okay, because when Commissioner Duran and I visited it was up around 90.

MR. PARRISH: The population of the juvenile facility, yes.

COMMISSIONER SULLIVAN: No, of the federal. Of the federal. The federal population was around 90 and the total population was around 120, 109, 110, something like that.

MR. PARRISH: The last contract I understand was based on a population of 60, so that may have been US Marshal and BOP prisoners.

COMMISSIONER SULLIVAN: But if the population—so this is based on an average of 40?

MR. PARRISH: Forty, yes.

COMMISSIONER SULLIVAN: And as I said before, we're obviously getting twice that many, at least at the time we were there. If that goes up, if we have more, the contract goes up.

MR. PARRISH: Yes, Commissioner Sullivan. It would go up. The cost would go up, the ultimate cost, the \$4.5 million. They will pay us that per diem for each inmate. Unfortunately, our population will probably decrease because the Bureau of Prisons has taken a position where they're going to try and place all of their residents within 300 miles of their homes and recently a facility opened up in Arizona and Texas. So some of the population that we had from those states will be returning to those areas.

COMMISSIONER SULLIVAN: Because I understood that ours was one of the few certified for the federal prisoners for youth at the time.

MR. PARRISH: It is American Correctional Association certified. It offers programs that some other facilities do not. We have a sex-offender program that is very rare for juveniles.

COMMISSIONER SULLIVAN: So you don't think that we'll achieve this \$4.6 million?

MR. PARRISH: I'd like to be optimistic and I would like to say we could. I think we have to work towards that as selling ourselves and the services we can provide, particularly with federal judges like certain programs and then they assign inmates accordingly for that treatment.

COMMISSIONER SULLIVAN: Thank you, Mr. Chairman.

CHAIRMAN DURAN: Thank you.

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman.

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: There's a motion to approve with a second. Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries. [Commissioner Gonzales was not present for this action.]

Okay, I guess everything else will be moved to the next meeting, Estevan. The Chair will entertain a motion to table all the items which we did not get to until the next

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meeting.

right?

COMMISSIONER CAMPOS: Except we're going into executive still,

CHAIRMAN DURAN: Yes.

COMMISSIONER SULLIVAN: We're also going to public hearings.

CHAIRMAN DURAN: Yes. Before the public hearings. Everything before the public hearings that we didn't hear with the exception of executive, which we're going to hear after the public hearings.

COMMISSIONER SULLIVAN: Move to table all the unacted upon items with the exception of Matters from the Commission and XI. Public hearings, and executive session, and Matters of Public Concern.

CHAIRMAN DURAN: Is there a second?

COMMISSIONER CAMPOS: Second.

CHAIRMAN DURAN: Any further discussion?

COMMISSIONER SULLIVAN: Until the next regular BCC meeting.

CHAIRMAN DURAN: Okay, those in favor signify by saying "aye."

[Unanimous] Opposed? Motion carries. [Commissioner Gonzales was not present for this action.]

X. G. Matters of Public Concern - NON-ACTION ITEMS

CHAIRMAN DURAN: Is there anyone out there in the audience that would like to address the Commission concerning any issue? Please step forward, state your name for the record.

MARIANNA HATTEN: I believe you addressed the question I had and that is what you're tabling and what you're not. You are moving ahead with items in section XI. this evening? Thank you.

CHAIRMAN DURAN: Anyone else out there like to address the Commission? Okay.

MR. LOPEZ: Mr. Chairman, I have a message to relay from a member of the public. Mr. Dale Ball was here earlier to notify this Commission of the opening of the Dale Ball Trail system. That will be done March 2nd at 2 p.m. at the intersection of Cerro Gordo and Upper Canyon Road. Congressman Udall will be present at that opening and extends a special invitation to our Commissioners to attend. And also the public is also very welcome to come to that opening.

CHAIRMAN DURAN: Okay, good. Thank you.

[The following resolution was erroneously heard under Public Hearings.
It was noticed for general consideration.]

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XI. PUBLIC HEARINGS

Resolution No. 2002-22. A resolution amending Resolution No. 1999-98 to expand the service area of Comcast Cablevision, Inc. (Successor to Mickelson Media, Inc.) to include the unincorporated area of Santa Fe County and to increase the franchise fees payable to Santa Fe County

MR. GRAESER: Thank you, Mr. Chairman. The background of this is that Comcast Cablevision has purchased almost all, maybe all but one of the cable television franchises in the county that were previously owned by a number of other companies. So they now own five franchises, all of which have different expiration dates and different terms and their proposal is in essence to take the one that has the longest time left on it, expand it so its service area covers the whole country, increase—in fact this was their proposal to us—increase the amount of fees they're going to pay, and then we terminate the remaining ones.

As you remember, coming on two years ago we passed a new ordinance that raised the rates on cable franchises from three to five percent. The agreement worked out by Comcast and by Samuel Montoya to present to the Commission was that the remaining franchise that we're looking to expand has 18 years left on it. The first nine years, they pay a four percent rate. For the second nine years they would pay a five percent rate. We ran the numbers on it and it looks like a significant benefit to the County over the 18-year term. And of course, no one knows entirely what's going to happen with subscribers and fees and all that within the 18 years but the rough numbers we could run make it look about \$200,000, \$220,000 benefit to the County.

The bigger benefit we're looking at short-term is administrative costs as far as we're only administering one franchise instead of five. And Mr. Shultz is here to present Comcast.

CHAIRMAN DURAN: Please state your name for the record.

KEN SHULTZ: Mr. Chairman, Ken Shultz, Comcast Cablevision of New Mexico.

[Duly sworn, Ken Shultz testified as follows:]

MR. SHULTZ: Mr. Chairman and Commissioners, thank you for allowing me to—first of all I would like to speak to you tonight but first of all I'd like to introduce our general manager for northern New Mexico, Mr. Brad Ryan who is with me tonight and who will be inviting you to a very important press conference and announcement we're going to be having on March 12th regarding the upgrades we're going to be doing in the Santa Fe area to the tune of about \$20 million that we're going to be spending in your area.

But anyway, as Mr. Graeser has said to you, I think this is a benefit of course to Comcast because we don't have to administer five franchises. You, of course don't have to administer five franchises. If the rates and the amount of subscribers were to stay the same over this period of time, then your increase would be approximately \$220,000. We

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all know that the subscriber base goes up and down. But we also know that rates never go down. So I would assume, and I think you would have to assume also that the benefit to the County is going to exceed that \$220,000 and I'd be happy to answer any questions that you might have.

CHAIRMAN DURAN: Mr. Shultz, I have just a comment. I would rather see that, instead of increasing the fees that you pay us that you try to address some of what I consider to be some inadequacies that are being offered to the community. I was having cable hooked up at my house and I had to wait all day for some guy to show up and he didn't show up. And I really scheduled my time around that and then I had to do it again and it just really—I really feel that I was at your mercy and there's no one I could complain to and there just really is nothing I could do.

And I'm sure that I'm not the only one that's happened to. So I'd rather, for me, I'd rather have you keep the money and use that money to try and provide better service to the citizens of the county and the city.

MR. SHULTZ: Mr. Chairman, I'm not going to try and make excuses for that. We all have faults.

CHAIRMAN DURAN: But this has happened to me twice in the last three times I've had cable hooked up. They won't give you a time when they'll meet you there.

You have to take the whole afternoon off and I'm a busy guy. I think that you can at least give me a schedule of time, one hour, maybe even two hours. But to spend the whole day waiting for the cable is—

MR. SHULTZ: I'm sure either later this week or the first part of next week when Mr. Ryan has his staff meeting, he's only been on the job about a month now, and so I would like him to have the opportunity to take your message back to his staff and say, This is what the Chairman of the Commission said to me and I don't want to ever here that again.

CHAIRMAN DURAN: You don't have to do that. But I just wanted to say that because it was a little aggravating.

MR. SHULTZ: Mr. Chairman, that is—we appreciate those kind of comments. Unless we know when we're doing something wrong, we don't have the opportunity to correct it and we will look into it.

CHAIRMAN DURAN: Well, next time I'm going to call you. Commissioner Sullivan, did you have a comment, or Commissioner Campos?

COMMISSIONER SULLIVAN: I did but I think Commissioner Campos was first.

COMMISSIONER CAMPOS: Go ahead. I'm ready to make a motion.

COMMISSIONER SULLIVAN: Mr. Chairman, two things. One, Chris, I didn't see a utility relocation clause in here and I don't know if it's in the ordinance but I think we need to—it's pretty typical in the franchises where once—this is a franchise to allow Comcast to install utilities in the public right-of-way.

MR. GRAESER: Mr. Chairman, correct. A relocation clause? You're

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referring to if we need them to move, then they pay them to move.

COMMISSIONER SULLIVAN: That's correct.

MR. GRAESER: I'm almost sure that's in the franchise ordinance.

MR. SHULTZ: It is in the ordinance and also, the original resolution that this one is amending also points out that it's in the ordinance.

COMMISSIONER SULLIVAN: I sure would like to see that in the ordinance.

MR. GRAESER: Absolutely, Mr. Chairman.

COMMISSIONER SULLIVAN: It should be—should it not be in the franchise agreement?

MR. GRAESER: Mr. Chairman, the way we've tried to—in the past it wasn't entirely clear how things are structured. The way we try to have it structured now is that almost all of the substantive requirements are in the ordinance and then the franchise agreement is a very simple document that essentially says We agree to the terms of this ordinance. I can get a copy of the ordinance in a couple minutes here.

COMMISSIONER SULLIVAN: Maybe we can go through the discussion on this and maybe come back to it, Mr. Chairman, in a couple minutes, once you verify that. Because this is a franchise agreement for like 40 years or something, isn't it?

MR. SHULTZ: No sir.

COMMISSIONER SULLIVAN: How long is it for?

MR. GRAESER: Mr. Chairman, it's for the remainder of the term of Resolution 1999-98, which is somewhere around 18 years, a little less than 18 years, 17 ½ years.

COMMISSIONER SULLIVAN: Seventeen is more years than I can count. That's a long time. So we need to be extremely clear that utilities installed by Comcast that are required to be removed on the public rights-of-way as a result of County actions, are removed at no cost to the County.

MR. GRAESER: Mr. Chairman, I will get the ordinance while you guys continue the conversation.

MR. SHULTZ: Mr. Chairman and Commissioner Sullivan, if I might just make a comment on that. Yes, it is for approximately 17 ½ years, but currently, we have two franchises that are 17 ½ years, so what we're doing is combining the two into one and taking the most recent one, which has the most whereases and clauses in it, as the one that we're going to be living by.

COMMISSIONER SULLIVAN: I just want to make sure the most recent one doesn't put us in a situation of having to pay for utility relocations on public rights-of-way.

MR. SHULTZ: I understand your comment and we probably should have, in your packets, had a copy of that ordinance in there with it for you to review.

COMMISSIONER SULLIVAN: The other question is how does this integrate with the cable franchise in Eldorado? There's a cable company in Eldorado.

MR. SHULTZ: That's part of the City of Santa Fe franchise, Eldorado. The County franchise is the unincorporated areas.

COMMISSIONER SULLIVAN: Eldorado's in the county. Eldorado has a cable company.

MR. SHULTZ: They have a different cable company than Comcast?

COMMISSIONER SULLIVAN: Yup.

MR. SHULTZ: It does not affect them at all.

COMMISSIONER SULLIVAN: Well, that's my next question. We need public access in Eldorado. Public access TV. this Commission meeting is on public access TV. But public access TV doesn't go very far in Santa Fe County. It goes to the city but it doesn't go to the county. What's missing is the connection between the provider, the cable provider and Santa Fe County and the cable company in Eldorado. Before, we were told they didn't have the channels. They had used them up for Nickelodeon or something. Now, our understanding is that they have the channels and they don't have to run Leave it to Beaver again ten times a day.

So can you get public access TV out into the Eldorado area? The 285/Lamy/Eldorado area? He's shaking his head yes.

MR. SHULTZ: He's the man. He's the general manager.

COMMISSIONER SULLIVAN: At no additional cost to the County? So that wouldn't be a problem to—

MR. SHULTZ: Public access is public access. What we do is donate the channel. But you do your own programming.

COMMISSIONER SULLIVAN: Okay. The same concern is ultimately out Route 14 as well, as you get towards the prison. And I assume you're going to be running your lines out there.

MR. SHULTZ: Well, as I mentioned to you before, we'll be having this press conference on the 12th explaining what all these upgrades include. I think a lot of the questions you're asking me tonight will be better answered then because we will have our technical people, our engineers and everybody else there.

COMMISSIONER SULLIVAN: Okay, but Chris, I was just trying to get a resolution to this problem that's been sticking all along about getting public access TV out to Eldorado. These gentlemen say it's not a problem, that they will do it.

MR. GRAESER: Mr. Chairman, as long as that's in the minutes, I believe they are going to be bound by it.

MR. SHULTZ: Well, and I did point to the general manager and said He says yes.

COMMISSIONER SULLIVAN: And what was the general manager's name again?

MR. SHULTZ: Brad Ryan. Would you like his direct number also. Mr. Chairman?

COMMISSIONER SULLIVAN: No, I don't need cable hook-up because I

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can't get it where I live.

COMMISSIONER TRUJILLO: So if you've got it in the record to do public access TV in the Eldorado area, how about the northern part of the County, Pojoaque Valley and the extreme—

MR. SHULTZ: Do we have cable out there?

COMMISSIONER TRUJILLO: We have cable out there. We have Century Cable out there. We used to. Now we have Comcast. So if we can get public access TV—

[Duly sworn, Brad Ryan testified as follows:]

BRAD RYAN: Good evening. My name is Brad Ryan, Mr. Chairman and Commissioners. On the Pojoaque side of things, I can't make any assurances that the actual local access channel will go out that direction. On the Eldorado side, actually, Eldorado Cable was purchased by Comcast or actually TCI about 2 ½ years ago.

COMMISSIONER SULLIVAN: That's right. TCI.

MR. RYAN: Right. So that actually falls under Santa Fe. We provide the services out in that direction and ultimately through the upgrade that is going to be taking place, the line-up that Santa Fe has currently will actually be distributed out to the Eldorado community itself. You'll be seeing something similar to that.

COMMISSIONER SULLIVAN: What will be the time frame on that?

MR. RYAN: I will say probably before the end of the year.

COMMISSIONER TRUJILLO: So the rest of the county then will be in a vacuum, unless you make some effort to get public access to those areas.

MR. RYAN: As Ken had said, what I would like to do and I've only been in this system and in this area for the last month, so geographically, I'm not real accurate no making determinations as to where our plant actually goes and where we're going to be distributing. What I'd like to do is make sure that you—we have formal invitations being sent to you, but I'd like to invite you on March 12th to the press conference that we're going to be having where we'll actually roll out what the different phases are for the upgrade that's currently going on and what kind of plant we will be putting in, and what kind of services will be available in all the different areas. And it will give some great clarity to that at that time.

CHAIRMAN DURAN: How about ESPN-2?

MR. RYAN: I think Rebecca had already asked that question. Moving forward we will see some realignment of channels from the digital product that we currently have done to the analog side of it. So exactly what those channel realignments are going to be, I can't tell you for sure at this point but here again on March 12th, I think we'll have a much clearer picture of exactly what the channel line-up is going to be and what we can expect moving forward as we roll people into the upgraded areas.

CHAIRMAN DURAN: Okay. Thank you. Any other questions of the applicant?

MR. GRAESER: Mr. Chairman, let me if you would, read the language to Commissioner Sullivan. If it's not to his liking maybe he could suggest how to change it.

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The current ordinance—

COMMISSIONER SULLIVAN: I'm not a hydrologist or an attorney.

MR. GRAESER: Perhaps we could work on it. "Facilities located on, upon, over, and under public places shall be constructed, installed, maintained, and cleared of vegetation in accordance with such reasonable requests as the County may impose from time to time on the owners of such facilities and in accordance with reasonable esthetic and safety concerns."

COMMISSIONER SULLIVAN: Read the first part again.

MR. GRAESER: Facilities located on, upon, over, and under public places shall be constructed, installed, maintained, and cleared of vegetation.

COMMISSIONER SULLIVAN: Okay, but what about when we tell them to relocate them?

MR. GRAESER: I understand that was your concern and possibly we want to insert the word "relocated" between "maintained" and "cleared of vegetation" as an amendment to this franchise agreement we're bringing forward.

COMMISSIONER SULLIVAN: Right. And does the ordinance say "at no cost to the County"?

MR. GRAESER: It does not say "at no cost to the County." Shall we put that at the end?

COMMISSIONER SULLIVAN: I certainly recommend that. Speaking as a hydrologist.

MR. GRAESER: Mr. Chairman, we can certainly add that wording as part of the motion and then change it before signature if the applicant agrees.

COMMISSIONER SULLIVAN: That's all the questions I had, Mr. Chairman.

CHAIRMAN DURAN: Any other questions? Okay, since we moved it to the public hearings, is there anyone out there that would like to address the Commission relative to this case? If not, what's the pleasure of the Board?

COMMISSIONER TRUJILLO: Move for approval, Mr. Chairman, with the amendments as proposed by Commissioner Sullivan.

COMMISSIONER SULLIVAN: Second.

CHAIRMAN DURAN: There's a motion to approve as amended and a second. Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries. [Commissioner Gonzales was not present for this action.]

MR. SHULTZ: Mr. Chairman and Commissioners, thank you.

CHAIRMAN DURAN: Thank you, sir.

XI. A. Land Use Department Items

- 1. Ordinance No. 2002-__ . An ordinance amending Article XIII, Ordinance 1998-5 of the Land Development Code (Ordinance 1996-10) to refine the planning process for the development of community plans and to include planing elements as outlined in the Santa Fe County Growth Management Plan, Resolution 1999-137**

MS. MCGOWAN: Mr. Chairman, Commissioners, I'll try to be very efficient in going through this. You have the draft ordinance in your packet, along with the minutes from when you originally authorized publication of title and general summary.

What is being passed out right now is an e-mail commentary on the ordinance that has been received. It's from Mr. Hugh Nazor. [Exhibit 3] And also a couple of pages of proposed corrections to the draft that staff has developed based on the comments from Mr. Nazor and also comments we received from Commissioner Sullivan. [Exhibit 4]

This hearing was advertised, published, evidently, not a lot of people are here tonight to speak to it. But as you recall, the issue came up last May that, first of all, the Community Planning Program Ordinance was adopted before the final Growth Management Plan was adopted, and that some changes were made in the final Growth Management Plan that put responsibilities on community plans that were not reflected in the ordinance. So staff has reviewed plans, growth management plans, the current ordinance and also looked at the different, our experience with the different community plans that have either been started or completed. We've completed a number by now, and we're proposing these amendments.

CHAIRMAN DURAN: Judy, to save some time, why don't we go through each page and just ask the Commission if they have any questions rather than read it. Is that okay?

MS. MCGOWAN: That's fine with me.

CHAIRMAN DURAN: Are you ready to get to that point?

MS. MCGOWAN: I was actually going to kind of lead us generally through the ordinance, not going page by page, but I was going to do it section by section.

CHAIRMAN DURAN: In the hand-out that you just gave us, I thought maybe these are the changes that you're suggesting, right?

MS. MCGOWAN: These are changes to the draft that we're suggesting based on comments that we've received, yes. And most of them that are in here are cleaning up of language that was open to misinterpretation or a little awkward, and then a couple of them are making sure that we are actually making the same requirements consistently through, like saying industrial uses as well as commercial uses, and having communities look at commercial, industrial and home occupations.

There is one item that is on the bottom of the second page which would be a new substantive item under the reviews, and this has been suggested that we have community

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plans, after they're adopted, do a review every three years in the community and then present a report to the County Commission just to see how the plan is working or not working, if there need to be any amendments made.

There was also a suggestion made that there might be a sunset clause attached to the plans if the review wasn't completed. And we'll be asking for legal review on that item. We haven't gotten it yet. But I would say that planning staff would not recommend a sunset on a community plan just for practical reasons. But in the ordinance itself, the amendments are in Section 1, primarily, which is pages 1 to 2. And that is clarifying the intents and bringing over language directly from the Growth Management Plan to clarify the intents statements for community planning in general and then how traditional community plans might differ from the focus of contemporary community plans.

And then also a section that if you do a zoning plan, what things you need to address. And we just felt it was important to make that very literal connection between the Growth Management Plan and the Community Planning Ordinance so that communities are aware up front, and these planning committees are aware right at the beginning of what direction and the scope of what they need to be doing.

There are some amendments proposed to Section 4 of the ordinance, which is the process and these are primarily clarification and clean-up items from questions that we have consistently received from planning committees. And those are on pages 3 to 6 of the draft ordinance. And they have to do with such things as making sure that business owners are included with property owners and representation, making sure that everyone understands that the planning committee, when you come forward for authorization that that planning committee is not the final planning committee, that the process is open to new membership until the thing is finalized and adopted. And a little bit better explanation of what the public participation plan means and also clarification that when you come forward with your authorization to plan to the Board, that your initial planning boundary should be reviewed and maybe changed up until the time that you come forward for adoption of your plan.

There's some renumbering but that's a technical item. The other changes, the main focus of the changes is in Section 5.3 of the ordinance, and that would move a number or items that are now kind of optional, additional planning elements, up to required planning elements. And we've attempted to rewrite this section so it's in the form of Step 1, Step 2, Step 3, so there's a clear sequence of how you would follow through to do the community plan. And that's on pages 6 through 11 of the draft. And you can follow through on what those steps are.

Then the final section that would be changed is Section 5.4, Additional Planning Elements, has been changed primarily just to delete those elements that we're now moving up to the required section. A couple of things that the staff wants to make sure that they're understood is that we think the community planning program is working. There's been some bumps but in general it seems to be working. It's been a real valuable educational process I know for staff and I think for our communities too. They've learned a lot about

themselves and about how the County works and how they fit in the county. It involves a lot of effort on the part of citizens from anywhere from two to four years that they're really devoting a lot of time and also a lot of County resources.

And you do need to understand that by moving items from the additional planning elements to the required planning elements and requiring a review every three years, we're probably increasing the amount of time and energy and resources that would be needed for any one community plan. And the process does seem to work, for the most part, to resolve conflicts and to generate new ideas about how to deal with things. And the other thing that we really want to emphasize is that when community plans are done and adopted, they're not perfect, first of all. Not every community is going to solve every problem they come up with and if they solve a couple of the ones that are real important to them that's probably a step forward for all of us. And neither are they forever, and they may have to be amended at some time.

COMMISSIONER TRUJILLO: Judy, how realistic is it to expect that most of the communities that request community plans will be completed within a reasonable time period. Because I know that Pojoaque started their community plan and because of manpower constraints or financial constraints or whatever, they're stagnated. We can have a beautiful ordinance in place but if we don't have the manpower to complete it, it's not going to do anybody any good. We've done some great jobs in Tesuque, Madrid, in La Cienega and San Marcos, but there's still a lot of communities out there, Cuarteles, La Puebla, Arroyo Seco, Pojoaque Valley that are stagnated. There's no movement. When can we anticipate that something will happen?

MS. MCGOWAN: Well, Mr. Chairman, Commissioner Trujillo, you're right. There is a big issue for the planning staff also in that there's more of us than there used to be but we're still struggling to complete as many as we've got going now. But we are making progress and the issue is probably priorities—which one comes when you finish one and can add a new one, which one comes first. And that's something we would look to the Board to help give us some direction on that. We do internally, the Cuarteles and Sombrillo plans, basically they kind of dropped their effort in favor of completing the water system. They are not at this point proceeding with the community plan. They're working on the water system. They decided that was their first priority. Arroyo Seco is progressing. They are making progress and I know that Robert and Paul go up there at least twice a month and they have focused on a corridor plan and they are making progress on that.

COMMISSIONER TRUJILLO: Nothing's happening in Pojoaque, right?

MS. MCGOWAN: In Pojoaque, they still have not been able to come forward to the Board because we quite honestly, you're correct, we don't have the staff to be able to do that right now. But that would be the staff's first priority for a new one to take on when some are completed. And as you know, La Cienega is just about done. Madrid and Cerrillos are done. We are working also on the 285 South Corridor out by Eldorado and that one is in draft form, so it is moving along.

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One thing that might be appropriate to do as well as a three-year review is to have the Planning Department make some reports back to you occasionally about the progress on the various of these plans so you have a better idea of what's going on with them.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: Judy, just one comment on the three-year review. Some of the plans, do they not, like Agua Fria, have already incorporated in the plan an automatic one-year review?

MS. MCGOWAN: La Cienega has.

COMMISSIONER SULLIVAN: La Cienega has that in there?

MS. MCGOWAN: Yes.

COMMISSIONER SULLIVAN: And I think that's great. I think the three-year is good too, just as a reminder in case they don't have that in their plans, but those that put it in for a one-year review I think is preferable, obviously, but I think it's good to give them a gentle nudge if they haven't looked at it for three years.

MS. MCGOWAN: Yes. Commissioner Sullivan, there is an issue of trying to keep on top of all things. We used to have a one-year review section in the County Code and it worked for a couple of years and after that was bypassed because ordinances and things were coming faster than that. It's really hard to keep up the good intentions about these reviews. We question, is three years the right number? Five years seems a little long. Anything shorter than three years when it's taken you three years to do your plan seems like a little much.

COMMISSIONER SULLIVAN: That sounds like the right amount of time and if it's a small, uncomplicated plan—of course they're all somewhat complicated, obviously, but if it's not a major plan they may not write a one-year review into it. They just rely on that three as an appropriate time period. That's all I had, Mr. Chairman.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: Just a question. Do we have any idea what it's costing us every year on County staff to do these community plans?

MS. MCGOWAN: I'm afraid I can't answer that, Commissioner Sullivan. I know that Jack Kolkmeyer did an analysis of the expenditure of actual monies for grants and assistance for the community plans and I think he presented that to you last year or some time in the last year. I don't believe we have scheduled or looked at per plan, essentially the entire planning staff, salaries and budget, is being spent on either district or community plans right now. Either plans or follow-up ordinances. And there's the occasional, there's always general ordinance like this too. But essentially, it's almost all being spent on that.

COMMISSIONER CAMPOS: I would like to have some kind of an assessment from the County Manager as to how much money we're spending every year on this and if this is where we want to put our money.

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MR. LOPEZ: Mr. Chairman, Commissioner Campos, just a point of clarification. Just specifically, how much money we're spending every year on community planning?

COMMISSIONER CAMPOS: Yes sir.

COMMISSIONER TRUJILLO: I'd just like to say from an investment perspective that this is probably the best investment of public monies that Santa Fe County has ever done. When you're investing in communities, in self-determination and guiding communities to establish their own development plans and the life, addressing quality of life issues. It's a reciprocity between local government and the community. I don't think we can invest public money in a better way.

CHAIRMAN DURAN: I think there's no amount too great to spend on planning our community's future relative to growth management. And how these communities shaped their future. I know that we've spent a lot of time in the last four or five years working on that and putting the mechanics together to give them, to empower these communities to do that. So that's all I have to say.

Okay, this is a public hearing. Is there anyone out there that would like to address the Commission concerning this issue? Okay, this concludes the public hearing process. This is the first meeting. We'll have another meeting next month.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: I have a question for Ms. McGowan. How are we assessing infrastructure and coming up with money to come up with money to deal with infrastructure issues? Is that a primary concern?

MS. MCGOWAN: It's actually in the ordinance right now. That's part of community plans, that communities could prioritize funding and submit it to the County for capital improvements or for the ICIP program.

COMMISSIONER CAMPOS: They could request that they be put on the list for ICIP? But how about generating their own funds for what they want to improve?

MS. MCGOWAN: I think that's going to vary from community to community.

COMMISSIONER CAMPOS: Is there a provision to deal with that?

CHAIRMAN DURAN: This isn't a development we're talking about. This is a planning process.

COMMISSIONER CAMPOS: I understand.

MS. MCGOWAN: I think if a community determines that that's a major issue then we would focus on potential solutions for it, such as improvement districts, other things. I think, say, for the Simpson Ranch contemporary community there probably will be some issues around that. For some of the other communities there aren't major infrastructure needs that get identified and they wouldn't need to spend a lot of time on that. Obviously, in the case of Cuarteles and Sombrillo, they decided that water system was their major issue and they've gone directly to the state I believe for funding for that.

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And I believe they're also applying for other grants. I'm not familiar with all the details. So they have taken that one themselves.

COMMISSIONER CAMPOS: Okay. If the County wanted to work with a community to help them raise some funds, do the ordinances that we have right now permit us to do so, to set up assessment districts or whatever to do a water system?

MS. MCGOWAN: I believe that there are statutes right now that would allow a community to come forward and request that from the Commission. But there is no special County ordinance regulating that.

COMMISSIONER CAMPOS: You don't think we need one?

COMMISSIONER TRUJILLO: You have to understand that these communities are unincorporated and they don't have a tax base. They're totally dependent on local government to address infrastructure needs and it is a responsibility of local government to do that. To start assessing people out of pocket expenses to address an inalienable right that they have for liquid waste or potable water or any other infrastructure that augments quality of life I don't think is right.

CHAIRMAN DURAN: Thank you, Judy.

MS. MCGOWAN: Thank you, Commissioners. And just note for anyone who's interested that we are very interested in getting comments on the ordinance so that we can prepare any amendments for the next hearing.

CHAIRMAN DURAN: Thank you.

MR. ABEYTA: I would ask, Mr. Chairman, that the next case, CDRC CASE #MIS 00-5812 could be moved because the applicant, Jim Siebert is at another meeting right now and he wasn't expecting it to come up this quickly. So he asked if it came up he could just move behind some of these other cases.

CHAIRMAN DURAN: Where is he? At the City?

MR. ABEYTA: City.

CHAIRMAN DURAN: That's okay with me. How about the rest of you?

- XI. A. 4. **AFDRC Case #A/V 01-5580. Henry Romero Appeal/Variance. Henry Romero, applicant, is appealing the Land Use Administrator's decision to deny the placement of a second home on 1.35 acres, which would result in a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code. The property is located at 5124 Avenida de Seasareao in the traditional community of Agua Fria, within Section 31, Township 17 North, Range 9 East**

WAYNE DALTON (Review Specialist): Thank you, Mr. Chairman. This case was scheduled to be heard by the Agua Fria Development Review Committee on January 10, 2002. The AFDRC failed to make a quorum and did not make a decision on

this case. It is the applicant's right to be heard within 60 days of a filed application. The applicant is requesting a variance of the lot size requirements of the Land Development Code in order to allow a second dwelling unit on the property. The property is located at 5124 Avenida de Seasareao within the traditional community of Agua Fria. Article III, Section 10 of the Land Development Code states minimum lot size in this area is .75 acres per dwelling unit.

There are currently two homes and two septic systems on the property. The property is served by an onsite well which currently serves the existing residents. The applicant states that the second home will be for his daughter. The applicant's daughter is a single parent who is supporting three children on her own. The applicant states that his daughter has been renting for several years and simply cannot afford to live and support three children due to the high cost of living in Santa Fe.

Recommendation: Staff recommends denial of the appeal based on Article III, Section 10 of the Land Development Code which stated the minimum lot size in this area is 0.75 acres per dwelling. Staff also recommends that the request for a variance be denied. The intent of the Code is to set minimum lot size in this area at 0.75 acres per dwelling unit. Thank you.

COMMISSIONER SULLIVAN: Questions of the staff?

COMMISSIONER TRUJILLO: Yes sir.

COMMISSIONER SULLIVAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: You say that there's two existing houses on that lot? Or are they proposing to include another house?

MR. DALTON: Mr. Chairman, Commissioner Trujillo, there are two dwellings on the property. One that was existing and the one for his daughter is already in place.

COMMISSIONER TRUJILLO: It's already in place.

MR. DALTON: That's correct.

COMMISSIONER TRUJILLO: What they're trying to do is split the property, right?

MR. DALTON: No. This is not a land division, Commissioner Trujillo. This is just to place a second dwelling on the property that's already in place.

COMMISSIONER TRUJILLO: It's already there.

COMMISSIONER GONZALES: They're just wanting to come into conformity, basically, with the Board decision.

COMMISSIONER TRUJILLO: Okay.

COMMISSIONER SULLIVAN: Wayne, my understanding is that this is a temporary situation. It's a non-permanent foundation and has a time-limit on it. Is that correct?

MR. DALTON: Mr. Chairman, Commissioner Sullivan, that is correct.

COMMISSIONER SULLIVAN: And what's the time limit?

MR. DALTON: It's a two-year temporary permit.

COMMISSIONER SULLIVAN: Renewable?

MR. DALTON: That's correct.

COMMISSIONER SULLIVAN: Thank you. Is the applicant here? Would you come forward please and have the County Clerk swear you in.

[Duly sworn, Henry Romero testified as follows:]

HENRY ROMERO: My name is Henry Romero and I live at 5124 Avenida Seasareao Agua Fria Village.

COMMISSIONER SULLIVAN: Mr. Chairman, what would you like to add to the comments of Mr. Dalton?

MR. ROMERO: Just what he stated and this is the first time I've ever been in this environment so it's all new to me. I'm just going with procedures of the County according to what they allow.

COMMISSIONER SULLIVAN: Are there questions from the Commission of Mr. Romero?

COMMISSIONER GONZALES: Mr. Romero, you're submitting this because you want to assist your daughter.

MR. ROMERO: Just to assist my daughter, yes. And my grandkids because we're legal guardians to the first two older ones. Just to assist her in the best we can and hopefully it will pan out.

COMMISSIONER GONZALES: Right now you're sharing the well or are you on the Agua Fria system?

MR. ROMERO: No, we have our own well.

COMMISSIONER GONZALES: And septic, same?

MR. ROMERO: Right. We have two septic tanks. One for our home and the additional one for Reena that we purchased, we did the paperwork in '93 and at that time we were denied so we just let it ride. I never knew the procedures but now I do so that's what we've been trying to conform with.

COMMISSIONER GONZALES: Okay. Thank you. No further questions.

COMMISSIONER SULLIVAN: Any other questions from the Commission to Mr. Romero. Thank you, Mr. Romero. Are there those in the audience that would like to speak in favor of this application? Are there any in the audience who would like to speak against this application? Hearing none, what's the pleasure of the Board?

COMMISSIONER GONZALES: Mr. Chairman, I'd move to approve the variance of AFDR Case #A/V 01-5580.

COMMISSIONER TRUJILLO: Second, Mr. Chairman.

COMMISSIONER SULLIVAN: Discussion.

COMMISSIONER CAMPOS: I have a question. There was some indication that this was a temporary two-year? I didn't see anything in your report, Mr. Dalton.

MR. DALTON: Mr. Chairman, Commissioner Campos, the last page of your staff report, or the staff packet. It's Exhibit E. It has the staff conditions.

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COMMISSIONER CAMPOS: If it's granted it's going to—you're recommending that if it's granted it be on a two-year?

MR. DALTON: Yes. That's correct.

COMMISSIONER SULLIVAN: Commissioner Gonzales, was that a part of your motion to include the AFDRC conditions?

COMMISSIONER GONZALES: No.

COMMISSIONER SULLIVAN: No?

COMMISSIONER GONZALES: No. I'm not in favor of item number one, the temporary permit.

COMMISSIONER SULLIVAN: The temporary permit? You think it should be permanent?

COMMISSIONER GONZALES: Yes.

COMMISSIONER SULLIVAN: Okay. What about the conditions two through seven.

COMMISSIONER GONZALES: I would—

COMMISSIONER SULLIVAN: That all relates to the—

COMMISSIONER GONZALES: That all relates to the first. I think, Mr. Romero, wouldn't it be your preference that you actually put your daughter's mobile home on a permanent foundation? Or would you rather just not keep it permanent? You'd rather do it on a permanent, wouldn't you? I think it's—my feeling, Mr. Chairman, reporting this again, because this is again an effort to help Mr. Romero to assist his daughter and if he's always having to come in every two years and worry about whatever the politics of the Commission are at the time to determine whether his daughter can continue to live on their property I think it's a lot of anxiety that they shouldn't have to worry about so I would not support the AFDRC conditions.

COMMISSIONER TRUJILLO: And on top of that I think that the Romeros are legal guardians to grandchildren so that doesn't end in two years. That continues after two year and they're going to need a place to live in perpetuity.

COMMISSIONER GONZALES: So it does not include that.

COMMISSIONER SULLIVAN: Further discussion? I would just add that most of these that we've done, particularly when they've had other approvals have been on a temporary basis where the applicant is talking about a hardship.

COMMISSIONER GONZALES: I would just remind the chair that in the cases that I remember it's mostly to take care of elderly parents who are ailing and need more immediate assistance. This is going directly toward assisting a young family and providing a space for that young family to live so I don't think—I think it's Mr. Romero's intent that his daughter would always live there and not use it as a place—we're not subdividing the lot so he can't sell it. I wouldn't mind a condition saying that he cannot use it for a rental for anyone outside of his family, so that the property always stays a part of the family. So I would move that we would add a condition to state that it prevents the second dwelling, if this is approved from being used as a rental property. It can only be

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used for family purposes.

COMMISSIONER CAMPOS: Mr. Chairman.

COMMISSIONER SULLIVAN: Commissioner.

COMMISSIONER CAMPOS: I'm just curious how you plan to enforce this non-rental clause.

COMMISSIONER GONZALES: I think more importantly—I'm not sure how we would plan to enforce but if it were to come up, we would be able to have it addressed. But I think to have, the fact that they have to come back every two years—I'm okay without putting it into place. They can rent it if you guys don't think that that clause would be enforceable.

CHAIRMAN DURAN: I think the answer to this question is the same way we enforce all the other ones. When somebody does something wrong and the neighbors complain, we send Code enforcement out there. We can't—

COMMISSIONER CAMPOS: Essentially meaningless enforcement then.

CHAIRMAN DURAN: I wouldn't say that.

COMMISSIONER CAMPOS: I would say. Any factual—do you want to in your motion set forth any facts that would meet the ordinance requirement in granting variances?

COMMISSIONER GONZALES: Commissioner Campos, I think the fact that Mr. Romero has come forward and said that this is a hardship, that they've testified before this Commission that he's in need of providing this land to his family, is for me, sufficient.

COMMISSIONER CAMPOS: Do you have authority in the ordinance that says if someone comes and says I have a hardship I can get a variance?

COMMISSIONER GONZALES: Absolutely.

COMMISSIONER CAMPOS: Let's see it.

CHAIRMAN DURAN: Call for the question.

COMMISSIONER GONZALES: Look at it. There's a variance process—

COMMISSIONER CAMPOS: Let's see what it says.

COMMISSIONER GONZALES: It allows for a hardship, for the Commission to determine whether a hardship exists.

COMMISSIONER CAMPOS: It doesn't not. I think that's absolutely wrong.

COMMISSIONER GONZALES: It doesn't allow—

COMMISSIONER CAMPOS: Not for personal hardship.

COMMISSIONER GONZALES: It doesn't?

COMMISSIONER CAMPOS: It does not.

COMMISSIONER GONZALES: Oh, I disagree.

COMMISSIONER CAMPOS: It's either there or it's not, Commissioner.

COMMISSIONER SULLIVAN: Time out. Maybe we can, Chris, can you answer Commissioner Campos' question about the variance?

MR. GRAESER: Mr. Chairman, I guess I could answer it in this way. Exhibit B in your packet is the Code provision.

CHAIRMAN DURAN: Chris, we have the authority to grant a variance based on our interpretation of the criteria. Is that correct?

MR. GRAESER: Mr. Chairman, if you're asking if it's the Commission's duty to determine if the factual situation is such that it meets the Code requirements for granting a variance, the answer is yes.

CHAIRMAN DURAN: Okay, we're not going to sit here and argue. We're just arguing. There's a motion—we're going to call for the question.

COMMISSIONER TRUJILLO: Call for the question.

CHAIRMAN DURAN: Could you restate the motion?

COMMISSIONER GONZALES: The motion was to approve the variance, presented for AFDRC Case A/V 01-5580 and eliminate the Agua Fria Development Review Committee's recommendation.

COMMISSIONER SULLIVAN: Was the rental in there? That was your latest motion and second.

CHAIRMAN DURAN: There was no rental.

COMMISSIONER GONZALES: Oh, right.

CHAIRMAN DURAN: Okay, those in favor of the motion signify by saying "aye." [Commissioners Gonzales, Trujillo, Sullivan and Duran voted aye.] Opposed? [Commissioner Campos voted nay.] Motion carries.

- XI. A. 3. **LCDRC CASE # MIS 01-5812.** Vallecitos de Gracia Amendment of a Condition. Jim Brown, applicant, Jim Siebert, agent, request an amendment to a condition on a preliminary plat for Vallecitos de Gracia, a 16-lot residential subdivision on 42 acres, which requires two all-weather crossings capable of accommodating a 100-year storm. The amendment would result in a variance of Article V, Section 8.3.4 of the Land Development Code. The property is located along County Road 54, northwest of the Downs Racetrack, within the traditional historic community of La Cienega, within Sections 22, 27, and 28, Township 16 North, Range 8 East

MR. DALTON: Thank you, Mr. Chairman. On October 8, 1998, preliminary plat approval was granted for this project which consists of a 16-lot residential subdivision on 42 acres. On October 14, 1999, a preliminary plat extension for 12 months was granted by the EZC in accordance with Extraterritorial Subdivision Regulations. Since EZC approvals, the Vallecitos de Gracia Subdivision is no longer under EZC jurisdiction. On June 21, 2000, La Cienega became a traditional historic community and this property now lies within the

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traditional historic community of La Cienega which is regulated under the Santa Fe County Land Development Code.

On November 14, 2000, the Board of County Commissioners granted a one-year extension of the preliminary plan and plat. On October 9, 2001, the Board granted a second one-year extension of the preliminary plan and plat which will expire on October 8, 2002.

The applicant now requests an amendment to delete condition #8 on a preliminary plat for Vallecitos de Gracia, which requires an all-weather crossing capable of accommodating a 100-year storm. The amendment would result in a variance of Article V, Section 8.3.4 of the Land Development Code.

The applicant states that they propose to use the existing low-water concrete dip section that crosses Arroyo de los Chamisos and the existing concrete dip section which crosses the Arroyo Hondo instead of constructing all-weather crossings. The Arroyo de los Chamisos and the Arroyo Hondo 100-year flood zones extend through the north and south portions of the property. The primary subdivision road exists and intersects off both sides of County Road 54, with a low-water concrete dip section for crossing both flood zones. The road also provides access for two adjoining subdivisions with 16 and 18 lots each.

Staff recommends that a dip section is not in conformance with the County Land Development Code for crossing a major flood zone. Vehicles will not be able to enter or exit this area during a major rain storm. The County Fire Marshal has reviewed the application and recommends that the applicant construct two all-weather crossings.

Staff recommends that the amendment and variance be denied based on Article V Section 8.3.4 of the Land Development Code which requires an all-weather crossing capable of accommodating a 100-year storm. Staff recommends that a dip section is not in conformance with the County Land Development Code. It is staff's position that vehicles will not be able to enter or exit this area in the event of a major rain storm.

The decision of the LCDRC was to amend a condition on the preliminary plat for Vallecitos de Gracia, a 16-lot subdivision on 42 acres. The LCDRC recommended approval of a variance of Article V, Section 8.3.4 of the County Land Development Code to allow the use of concrete dip sections instead of the Code required all-weather crossings.

CHAIRMAN DURAN: Wayne, how many people live beyond that dip already? Aren't there 100 people that live out there? Roman, do you know? There was a whole community that is already in existence beyond this dip that you're requiring, a bridge, right? Where you're requiring a bridge.

MR. DALTON: Mr. Chairman, there's about 26 lots.

CHAIRMAN DURAN: That are already in existence.

COMMISSIONER GONZALES: Lots with dwellings, or just lots?

MR. DALTON: Mr. Chairman, Commissioner Gonzales, I really couldn't tell you if they have dwellings on them. I know there's lots.

COMMISSIONER GONZALES: Have you done an inspection out there?

MR. DALTON: Mr. Chairman, Commissioner Gonzales, no I have not.

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COMMISSIONER GONZALES: So is there anyone here tonight who's gone out there and done an inspection to tell us.

MR. ABEYTA: Mr. Chairman, Commissioner Gonzales, we haven't done an inspection. We know the number of lots that exist, but we don't know how many of those lots have buildings placed on them. We can look into that before long.

CHAIRMAN DURAN: Any questions of Wayne? Is the applicant here?
[Previously sworn, Jim Siebert testified as follows:]

JIM SIEBERT: Mr. Chairman, Commissioners, my Jim Siebert. I'm previously sworn. I have a graphic that I'll hand out that I think will help explain the particular request. [Exhibit 5] Mr. Chairman, Commissioners, the area in orange is the Vallecitos de Gracia Subdivision. The area in brown are the roads that have actually been constructed to date. The blue, the top blue line is the Arroyo de los Chamisos. The bottom blue line is the Arroyo Hondo. And as you can see there's two dip sections which have been constructed at both locations. One on the Chamiso and one on the Arroyo Hondo.

In this particular case, on the Arroyo Chamiso, three lots are served on the other side, on the north side requiring the crossing of the Arroyo de los Chamisos and on the south side, two lots are actually served by a required crossing of the Arroyo Hondo. There's approximately, I think it's 18 lots platted on the south side. There's 14, I believe that are served by the dip section that are presently served by the dip section south of the Arroyo Hondo. More, there are 16 lots that are served by the dip section but there's also a considerable amount of platting that has occurred on the, around that subdivision that's been more lot split in nature. As I recall, there's approximately 30 lots total served by the present crossing.

COMMISSIONER GONZALES: So you're saying there's a total of five lots that will be affected by the crossing.

MR. SIEBERT: Correct. Five lots in the Vallecitos de Gracia Subdivision. To build a structure to 100-year standard would be exceptionally expensive for both of these crossings. It's more that this particular subdivision could bear. And for that reason we're requesting a removal of the one condition requiring 100-year flood plain and a variance from the standard requiring a 100-year flood plain—100-year crossing of the flood plain.

COMMISSIONER GONZALES: Mr. Chairman.

COMMISSIONER SULLIVAN: Commissioner Gonzales.

COMMISSIONER GONZALES: Jim, have you considered doing a density transfer? Would that work under our Code so that we get those five lots outside of the areas where they could be affected by that crossing?

MR. SIEBERT: One of the issues with a density transfer is that we would have to go to a different wastewater system in order to accomplish that which would substantially increase the development costs associated with the lots.

COMMISSIONER GONZALES: Isn't it more expensive to transfer the

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wastewater into those five lots than to share the infrastructure if you move the five lots somewhere closer to existing lots that are already platted?

MR. SIEBERT: Well, beside the infrastructure issues, it's also the desire of the applicant to sell larger lots. The idea is if you transfer the density into the smaller area then each of those lots gets smaller within that particular area.

COMMISSIONER TRUJILLO: Mr. Chairman.

COMMISSIONER SULLIVAN: Commissioner Trujillo.

COMMISSIONER TRUJILLO: Even with the density transfer, Jim, that crossing would still be utilized by about 16 other lots, right?

MR. SIEBERT: Well the north one is presently—actually, it's more than that because there's more than just the platted subdivision here. There's other lots that are also served by that same roadway.

COMMISSIONER TRUJILLO: So there's a lot of traffic crossing that arroyo.

MR. SIEBERT: Correct.

COMMISSIONER GONZALES: What's your estimated cost for the crossing?

MR. SIEBERT: Oh I guess you're looking in the range of \$250,000 to \$350,000 per crossing.

COMMISSIONER SULLIVAN: Jim, could you explain to me—one portion that's the dead-end portion of the road, that's the portion that the individuals in a flood aren't able to get across. The Arroyo Hondo or the Arroyo Chamiso, right?

MR. SIEBERT: Well, on the south end, south of the Arroyo Hondo or to the bottom of the page, that's correct. At the end of that cul-de-sac there would be two lots that would be, that would require a crossing of the Arroyo Hondo.

COMMISSIONER SULLIVAN: That's the first dip section?

MR. SIEBERT: Right.

COMMISSIONER SULLIVAN: Then when you were saying north, you're talking about north three lots, what do you mean by north? Where's that?

MR. SIEBERT: Well, north would be towards the top of the page and the three lots are where you can read Arroyo Chamiso flood plain, the three lots are those three lots that are to the top of the page from the Arroyo de los Chamisos to the orange line.

COMMISSIONER SULLIVAN: But those are within the subdivision.

MR. SIEBERT: Correct. Those are within the Vallecitos de Gracia Subdivision.

COMMISSIONER SULLIVAN: Are there any buildings within the subdivision now?

MR. SIEBERT: No. There's no—the land is vacant at this time.

COMMISSIONER SULLIVAN: So we have two homes that are south of the subdivision that have this access problem. Is that correct?

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MR. SIEBERT: Two lots within the subdivision. That's correct.

COMMISSIONER SULLIVAN: No, I'm talking about outside the subdivision.

MR. SIEBERT: Oh, outside the subdivision. No, you have I think there's like 14 lots.

COMMISSIONER SULLIVAN: But how many homes?

MR. SIEBERT: Homes? I'm not sure. I think there's probably approximately half as I recall on my site visits. There are probably at least half of those have modular units on them.

COMMISSIONER SULLIVAN: Okay so seven of those individuals have a problem. Now, was the condition imposed on the subdivision that they construct both dip sections? I mean both 100-year crossings?

MR. SIEBERT: Yes. The condition was that all crossings meet the 100-year standards so it would be for both. Correct. But only one of them is within the subdivision. Is the orange the subdivision?

MR. SIEBERT: That's correct. There's only the crossing of the Arroyo de los Chamisos is within the subdivision. The crossing of the Arroyo Hondo is outside the subdivision but it does provide access to two of the lots within the Vallecitos de Gracia Subdivision.

COMMISSIONER SULLIVAN: I understand. So that was the basis on which they required both crossings to meet the 100-year flood plain requirements.

MR. SIEBERT: Correct.

COMMISSIONER SULLIVAN: Now the Arroyo Hondo, as I recall, is generally quite a bit smaller than the Arroyo Chamiso in terms of flow. Is that the case here?

MR. SIEBERT: I'm not sure. I think they both carry pretty substantial flows.

COMMISSIONER SULLIVAN: And the County has tried to put culverts in here before and they've been washed out twice, I think. Right?

MR. SIEBERT: Correct.

COMMISSIONER SULLIVAN: It kind of seems like—I can certainly sympathize with the issue that if we don't have an improvement district here and it's very difficult to develop that you're laying all of the cost on one landowner. On the other hand we have a safety issue. It's kind of like building in the flood plain. If we can't provide flood plain protection than we shouldn't be building in that flood plain. It seems here, it certainly seems like this is an eligible situation where the County should be looking at getting funds to help, to help with this and that the property owner shouldn't have to bear it all. Perhaps some portion of it, the way you typically do when you're extending a utility line if it's going to serve another individual, you say, well, okay, you pay for your share and they pay for theirs.

But these other lots are already there so we can't back-assess them. I guess what

I'm getting at is we have a bond issue coming up for election. It has a wide variety of road and water and wastewater opportunities to assist. Can we look at that as a possibility of looking at County assistance in some proportionate amount and then requiring the developer to pay the balance?

CHAIRMAN DURAN: Well, I have a question on that. What are these bridges going to cost? What's it going to cost to build—

COMMISSIONER SULLIVAN: I think he said \$200,000 apiece.

MR. SIEBERT: I was estimating somewhere in the range of \$250,000 to \$350,000.

COMMISSIONER TRUJILLO: For bridges or the low-water crossings?

MR. SIEBERT: The bridges. To meet the 100-year crossing standard.

COMMISSIONER TRUJILLO: Mr. Chairman, I don't know about the suggestion Commissioner Sullivan has but this is not a County-dedicated road, is it?

MR. SIEBERT: No, they're both private roadways dedicated for public use.

COMMISSIONER TRUJILLO: Can't we use public money to improve private roads? Anti-donation clause, I don't think we can do that.

MR. SIEBERT: I don't have an answer.

COMMISSIONER TRUJILLO: Anyway, these are—what the developer is proposing is a low-water crossing, right?

MR. SIEBERT: Well, they're actually in existence today. They have been constructed. As part of the subdivisions to the north and to the south of the Vallecitos de Gracia requirement was to put in a dip section. I think they began, actually with culverts, and then the culverts washed out and then they went in and put in the dip section because they felt a dip section would actually be more stable over time.

COMMISSIONER TRUJILLO: You know that in the Pojoaque Valley there are about five low-water crossings traversing the river and they serve the purpose. Rather than have five bridges at an exorbitant expense, the low-water crossings do serve the community to traverse the river back and forth. In times of flood, people don't go through when the floods are coming but they're passable after the water subsides. And it's a feasible way of giving impetus to a good distribution of traffic in the valley and not copious bridges that we cannot afford.

COMMISSIONER GONZALES: Mr. Chairman, Jim, what's been the results of the low-water crossings that have been built there. Have we had floods that occur on an annual basis that make them impossible to cross through?

MR. SIEBERT: Well, during serious floods you would not be able to cross across these structures.

COMMISSIONER GONZALES: How often is that? What I'm saying is do we have an annual serious flood that would prevent that? Is it multiple times during the year based on what we know about those two washes that that could happen or will it happen every so often.

MR. SIEBERT: I guess that I don't feel that I can really speak to the frequency of the flooding. I have worked in Sunrise Springs for several years so I have some knowledge of the problems associated with Sunrise and probably historically it's approximately one major flood a year. But that can change in wet years significantly.

COMMISSIONER TRUJILLO: I have a question for Roman. Is staff adamant about a bridge, Roman or experientially, is the low-water crossing serving the purpose?

MR. ABEYTA: Mr. Chairman, staff's position is that the Code requires a bridge, so staff is requiring what the Code states.

COMMISSIONER TRUJILLO: But are you saying that the existing low-water crossings, are they serving the purpose?

MR. ABEYTA: Mr. Chairman, as far as accessing the lots, they're serving the purpose right now, but they would not serve the purpose if there was a significant flood. Not only is staff not supporting this but the Fire Marshal's Office has looked at this and they have the same concern. While the roads are adequate now, if there's an emergency they would not be adequate.

COMMISSIONER TRUJILLO: We have five low-water crossings in the Pojoaque Valley, the Pojoaque River and there's no problem for emergency response. We have three that are proposed that we've gotten funding from the state legislature, not bridges, low-water crossings that will make it easier for emergency response.

MR. ABEYTA: Mr. Chairman, Commissioner Trujillo, I would state that the difference there is those are existing conditions. Those are existing lots. This is a subdivision. So I don't know if those bridges or those low-water crossings are serving subdivisions or were approved for new subdivisions in that location. If they were, if an applicant were to come in with a new subdivision and propose that low-water crossing up north, we would require the same thing. I think that's the difference in our minds between the situation up north and this situation.

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I don't think, correct me if I'm wrong, Jim, you know the Code, that an all-weather crossing necessarily has to be a bridge. It could be concrete box culverts, right?

MR. SIEBERT: Correct. Just anything that will pass the flow of a 100-year storm without going over the top of the structure.

COMMISSIONER SULLIVAN: And it could be a properly installed and anchored culverts as well with the road section across it.

MR. SIEBERT: Correct.

COMMISSIONER SULLIVAN: So I don't think the requirement is necessarily for a bridge. It just needs something that passed the 100-year storm flow. I see in the comments from La Cienega Valley Association that in their meeting County Attorney Ann Lovely stated that liability in the event of an incident at the crossings would

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become the liability of the County if improvements were not made and the variance was granted. Would that be the County's legal position here?

MR. GRAESER: Mr. Chairman, I don't think we want to give up the argument and impose liability on ourselves at this point. The claim would be that this relates to road design which is something that we've waived immunity for. The argument would be that it relates to subdivision approval, which is not something we've waived immunity for. Our concern is that there is potential for liability.

COMMISSIONER SULLIVAN: Understanding you don't want to give away the farm here but your advice is that there is some liability exposure here.

MR. GRAESER: Mr. Chairman, Commissioner Sullivan, yes, there is the potential for some liability although obviously we're not admitting that there would be, if that's delicately enough put.

COMMISSIONER SULLIVAN: Very delicately put. Well done.

MR. SIEBERT: I didn't hear that.

COMMISSIONER SULLIVAN: I'm concerned, Mr. Chairman, about the safety issues. It is a new subdivision. I understand the applicant's position and if they are private roads then of course, Commissioner Trujillo's right. We can't provide state or Country funds to improve them. To that extent perhaps Commissioner Trujillo or Commissioner Gonzales' is worth looking at a little more in terms of looking at some kind of density transfers to keep that area, which is obviously a flooded area regardless, from being developed and providing the applicant with an opportunity somewhere else higher and drier.

CHAIRMAN DURAN: What would be—what's the cost of the culvert, rather than a bridge? \$250,000 for a bridge, how much to make it a safe crossing using culverts.

MR. SIEBERT: Well, they're all going to be very expensive, whatever the solution is. Even if you use culverts, those culverts are going to have to be anchored in some fashion to keep them from being moved downstream.

CHAIRMAN DURAN: And how many lots is this going to service? I should say new lots.

MR. SIEBERT: New lots would be three on the north side or the Arroyo Chamisos and two on the south side of the Arroyo Hondo. New lots.

CHAIRMAN DURAN: I'm sorry. Tell me that once more.

MR. SIEBERT: New lots within Vallecitos de Gracia, you would have three lots on the north side of the Arroyo de los Chamisos, which is to the top of the diagram, and then you'd have two lots on the south side of the Arroyo Hondo.

CHAIRMAN DURAN: Two lots?

MR. SIEBERT: See how it comes down and it does like a U? And then there is a cul-de-sac at the very end. Right at the very end of that cul-de-sac that are proposed in the Vallecitos de Gracia Subdivision. Those are the two lots that required the crossing of the Arroyo Hondo, two new lots.

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CHAIRMAN DURAN: Those two new lots and then how many lots over here?

MR. SIEBERT: Three on the north side.

CHAIRMAN DURAN: So the three lots on the north side—there are how many lots already being serviced by the low-water crossing?

MR. SIEBERT: Well, there are approximately 30 lots that are served by the low-water crossing on the Arroyo Chamisos, presently.

CHAIRMAN DURAN: So a situation already exists for how many lots? I'm having a hard time remembering. I'm sorry.

MR. SIEBERT: It's 30 lots, approximately 30 lots. There are 16 in this subdivision and additional lots that have occurred surrounding it that occurred by lot split.

CHAIRMAN DURAN: So you're actually only on the northern part asking to intensify the number of lots that have to cross that drainage with a low-water crossing by three on the north.

MR. SIEBERT: Correct.

CHAIRMAN DURAN: And on the south, you're asking to increase the number of lots that are already in existence by two.

MR. SIEBERT: Correct.

CHAIRMAN DURAN: Well, that's not too bad.

COMMISSIONER TRUJILLO: What do you think about the density transfer, Jim? Going from one side of the Arroyo to the other? With the same amount of lots.

MR. SIEBERT: The two issues are, one is the additional cost for the liquid—you'd have to go to an advance liquid waste systems at that point, and the other, the applicant would prefer to have the larger lots rather than smaller lots.

CHAIRMAN DURAN: This is the subdivision in here, right? The orange?

MR. SIEBERT: Within the orange.

CHAIRMAN DURAN: So this already exists.

COMMISSIONER SULLIVAN: But there are no residences inside the orange.

CHAIRMAN DURAN: Right. But again, to intensify, all they're asking for, the request would intensify the number of lots that already existed over here by two. This low-water crossing already exists that serves all these lots right here already.

COMMISSIONER SULLIVAN: Right. But all those other lots, move your pen up a little further. All those lots would have to use that second low-water crossing. The one—move your pen to the left—right there. All those other lots would have to use that one to get out. So there's only one or two lots that don't use one or the other of the low-water crossings.

CHAIRMAN DURAN: So it's actually these lots right here.

COMMISSIONER SULLIVAN: Right. They all have to get out too.

CHAIRMAN DURAN: But this is a County road. These are serviced by

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this cul-de-sac here. And this is a County road. And these lots already are accessed off of here. This is Airport Road or whatever that road is called now. So these lots over here already are going to come off of this road, so it's just these two lots here, three lots.

COMMISSIONER SULLIVAN: Okay. I see what you mean.

CHAIRMAN DURAN: So three here and two over here that are being requested that would be an intensification of what already exists.

COMMISSIONER SULLIVAN: So there's a possibility that without too much trouble we could extend, if we wanted to get County funding or state funding to help them out, we could extend the County road just to the north and just to the south to the points of the dip sections. A fairly short run would get us to the dip section and then we could—

CHAIRMAN DURAN: Where? Over here?

COMMISSIONER SULLIVAN: Right there. Yes. Go down to the County road to the right. Go to the right, to the right. Right there. No go up. That little piece could become a County road. Now go down. That little piece could become a County road to the dip section.

CHAIRMAN DURAN: If we got funding.

COMMISSIONER SULLIVAN: If we got funding. So we're not having to build a whole lot of County road and then we could—I'm trying to find a way to help everybody.

COMMISSIONER TRUJILLO: And all the developer would have to do would be to bring that non-County road up to standard and then request dedication—

COMMISSIONER SULLIVAN: Exactly.

COMMISSIONER TRUJILLO: And then we could go for money for bridges on both.

COMMISSIONER SULLIVAN: Then we could go for money.

CHAIRMAN DURAN: Oh, okay.

COMMISSIONER SULLIVAN: And then we're helping everybody. Then we're getting everybody out of there.

CHAIRMAN DURAN: Everybody that's in existence [inaudible]

COMMISSIONER SULLIVAN: Correct.

CHAIRMAN DURAN: That's not bad.

COMMISSIONER TRUJILLO: And that's a major out of pocket expense for the developer, and it helps. It's a win-win situation for the whole community.

COMMISSIONER SULLIVAN: Yes. It's a little bit of out of pocket expenses for the developer to upgrade that road but that's minor compared to the cost of the culverts and if we can go get the money for the cross sections, we might want to assess him his prorata share of the lots. If it's three lots and there's 30 out there, then maybe he would have to pay a tenth of it or something.

CHAIRMAN DURAN: Because if we don't do that, then what we basically have done is abandon any help or assistance to these people that are already in existence.

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COMMISSIONER SULLIVAN: Forever. Correct.

CHAIRMAN DURAN: Forever. On both sides.

COMMISSIONER SULLIVAN: Correct.

COMMISSIONER TRUJILLO: So what does the applicant do about that?

MR. SIEBERT: Well, one of the issues is we are under a constraint to move forward with the final plat. We have preliminary plat, but we have a time limit on the final plat. I'm afraid what would happen is that the preliminary plat would expire in the time that we're waiting for a resolution to the arroyo crossings.

COMMISSIONER GONZALES: I don't think they're proposing that.

CHAIRMAN DURAN: I don't think so either. Go ahead.

COMMISSIONER GONZALES: Well, the way I understood the Commission and Commissioner Sullivan, maybe it's better that he speaks but the way I understood is it, just so I understand right is that part of the condition would be that you upgrade to the crossings, the roads to County standards and then you're allowed to proceed forward and the County at that point would move to seek funds to be able to build the bridges for the entire community.

COMMISSIONER TRUJILLO: Dedicate it first and then—

COMMISSIONER GONZALES: Right. I didn't hear them say that you would have to wait until we got the money in place before you could forward.

MR. SIEBERT: Oh, okay.

CHAIRMAN DURAN: Just improve the road, dedicate it to us. We can accept it as a County road and then go for state funds.

COMMISSIONER TRUJILLO: And then it's out of your hands.

CHAIRMAN DURAN: Just to the other side of the crossings though.

COMMISSIONER SULLIVAN: Now the only problem, Mr. Chairman, with that theory is that on the south portion, that's not within the developer's parcel. The south portion—I assume it's a private road and they wouldn't mind it being upgraded but that piece isn't in his boundary.

COMMISSIONER TRUJILLO: But it does have access to his—

COMMISSIONER SULLIVAN: That's correct. He's got direct access to it. Adequate access.

CHAIRMAN DURAN: The right-of-way exists, right? Proper right-of-way exists.

COMMISSIONER SULLIVAN: He said it was dedicated for public use but not turned over to—not built to County standards and turned over for County maintenance.

What's the width of those roads, Jim? The width of the right-of-ways?

MR. SIEBERT: Well, the width is 50 feet. They're actually, they have been previously improved to County road standards. They have been out there a while and they may need some upgrading, but they initially were built to County road standards. The only hesitation I have is I think the process, correct me if I'm wrong, to petition—I think you have to petition the County to have that section of the road brought into the County

and then there's going to have to be—there's a defined process for doing that including going out and getting signatures of a certain percentage of the landowners and then going through the process of doing that.

COMMISSIONER SULLIVAN: I think that's cheap compared to \$500,000 worth of—

CHAIRMAN DURAN: I disagree with you.

COMMISSIONER GONZALES: I don't think that's the case either.

CHAIRMAN DURAN: I think the one you're talking about, you did that at La Barberia and that was because the road wasn't wide enough.

COMMISSIONER GONZALES: Right. You had to get additional rights-of-way.

CHAIRMAN DURAN: So this already meets the County standards in terms of width, so you don't need to get additional right-of-way. You just need to improve it to County standards. So if we approve the subdivision or whatever you're applying for today, it would be conditional upon you agreeing to improving both sections of the road up to the crossing to County standards. Period. And then we would go through the process of adopting them as County roads. Right?

COMMISSIONER TRUJILLO: Right.

CHAIRMAN DURAN: And then go through the process of trying to get funds to fix, get bridges for those crossings.

COMMISSIONER CAMPOS: What if you don't get the money, Mr. Chairman? There's a lot of priorities in the county.

CHAIRMAN DURAN: If we don't get the money, we don't get the money.

COMMISSIONER TRUJILLO: It's still our responsibility that it be a County road.

COMMISSIONER CAMPOS: That's pretty bogus.

COMMISSIONER SULLIVAN: Mr. Chairman, I think there should be some participation on the developer's part in proportion to the number of lots in his subdivision versus the number of lots served by the section. I think that would be a minor cost.

CHAIRMAN DURAN: How would you do that?

CHAIRMAN DURAN: Well, we could compute the total number of lots that are served and take his, is it 17 lots? And create a percentage.

COMMISSIONER CAMPOS: Mr. Chairman, maybe we should table this since it's getting a little complicated. Maybe you need some time to think about it.

CHAIRMAN DURAN: It's not complicated to me.

COMMISSIONER CAMPOS: Cool your heels a little bit. Maybe tomorrow it will look different.

CHAIRMAN DURAN: Just because you don't understand.

COMMISSIONER CAMPOS: If you were paying for it, Mr. Chairman, I wouldn't mind.

CHAIRMAN DURAN: The fact of the matter, Commissioner Campos, is that

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there are people who live over here already and people who live over here already that are faced with this problem.

COMMISSIONER CAMPOS: And who caused the problem?

CHAIRMAN DURAN: Who cares who caused it? It's what exists. Jesus.

COMMISSIONER SULLIVAN: I wonder, the only other thing, I'm just thinking out loud, Mr. Chairman. Jim, would this right-of-way require 66 feet on County Code or is 50 adequate?

MR. SIEBERT: With the present access density, no. Fifty feet would be adequate.

COMMISSIONER SULLIVAN: Because it's 66 on County Road 54. That's the only solution that I can see. If you have something, I think your liability as a municipal corporation is reduced if you have a plan to do something. If you've just not done something and haven't maintained something and an accident occurs, that's one thing. If you have a plan to upgrade it. If it's on a list of things and I'll put in a pitch here for my road strategic plan again, if you have this on your plan and you're looking for money for it and you're hoping to improve it, that's a philosophy that the Highway Department uses when it runs into problems. Somebody has an accident on a road. They say we can't improve every road every year but we do have it on a sequence of regular maintenance and upgrading.

So I think if we have an honest effort to get that money and if there's some contribution, appropriate contribution which I think the staff would have to negotiate and come back to us on, some appropriate contribution from the developer, I don't know what that would be. It might be \$20,000. Whatever's something that's appropriate. Then it's not a pretty sight, but at least we're doing something that helps out the other people who are in the same situation.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: It seems to me that we're doing this backwards again. Doing it from a variance perspective instead of the overall plan. We're proposing to adopt a piece of road that's probably not safe in hopes that someday we're going to get some money. I think it's backwards thinking. Let's look at the big picture. We have priorities and this is how we get into budget problems, how we get into liability problems, and this requires some consideration from staff and I would suggest we table it and give it some more thought.

CHAIRMAN DURAN: I think you should take a little bit more pro-active approach to the problems that are community has and it's obvious that there are people out here who have a problem on both sides of this property and this is I think a great way of solving their problems. We're not making the commitment to use general fund money. We're talking about going to the state and asking them for additional funds, or funds to help alleviate a problem for the residents out there.

COMMISSIONER CAMPOS: You're not likely to get it in the next five or ten—

CHAIRMAN DURAN: Well, I'm glad you have a crystal ball.

COMMISSIONER CAMPOS: You know how the budget's going.

CHAIRMAN DURAN: So what would you think of something like that?

MR. SIEBERT: I discussed it with the applicant and he would agree to improving the road to County standards up to the dip section on either side of County Road 56.

CHAIRMAN DURAN: Would you also agree to consider—I don't know what condition those dips are, but I'd hate to—what's the condition of those dips? How long do they last and what kind of life span do they have and are they near the end?

MR. SIEBERT: Well, I've driven both of them and they seem to be in pretty good condition. They've been in—I'm not sure how long they've been in but I assume it's at least five years.

CHAIRMAN DURAN: Do you think that you could shore them up as part of that, just to make sure—I don't mean put a whole new dip section in there but if you could at least agree to do what you can to shore them up and ensure that they're safe.

MR. SIEBERT: Well, I'm not sure that shoring up is the issue. They either work or they don't work and they seem to be working fine. I recall one situation in Eldorado. We had something similar to that. They placed a pole on either side and said the water is—with a sign that said if the water is at this level, do not cross. And I think it's those kinds of things that we can do to make it safer.

CHAIRMAN DURAN: That'd be good. Okay. This is a public hearing. Is there anyone out there that would like to address the Commission concerning this issue? How many are there out there that would like to address? Okay. Why don't you let the County Clerk swear you in.

[Duly sworn, Donald Walcott testified as follows:]

DONALD WALCOTT: My name is Donald Walcott. I represent Catherine Fishman who sold this property to Mr. Brown for the purpose of developing it into a subdivision. She also sold the parcel to the north and the parcel to the south to two other individuals who received subdivision approval. I think the only thing—one issue that seems to be lingering for the Commissioners tonight is how these dip sections got built. Well, in 1995 they were approved by the County Engineer, Oralynn Self and were built to specs pursuant to the County Code at that time. One subdivision was approved with that Code provision in place as it was. Subsequently, the road provision got changed from a 25-year flood zone to a 100-year flood zone requirement.

The subdivision to the south, the applicant, Sam Valencia I believe, received subdivision approval with a variance for that dip section. These dip sections have been in place basically since 1995, have been approved for two other subdivisions. As has been noted by Commissioner Duran, both of these dip sections are already servicing dozens of lots and this application only asks for five additional lots.

So any safety issues that may be raised in this application, as you all already identified, exists for everyone else out there who've been using these sections for seven

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years.

CHAIRMAN DURAN: Thank you. Next speaker please. You're the applicant, aren't you? We're into the public hearing process right now. Thank you.

[Duly sworn, Donald Sandoval testified as follows:]

DONALD SANDOVAL: Commissioners, my name is Donald Sandoval and I've lived out there on Paseo del Angel North for going on six years now. And when I bought out there I was never told how bad the water runoffs are. And on several occasions, I've been caught on one side or the other and on one occasion we were unable to get across to go pick up our son and had to call family members from town to go pick him up. And the water is really bad out there. It's not only once a year or whatever. We get it several times. We seem to get whatever from the city, everything ends up out there, and when the low-water crossing, we don't only get the water, once the water's gone we end up with tons of mud in there which damages our cars and also debris from within the city, branches and whatever people through in the arroyos ends up down there on that low-water crossing.

That low-water crossing is a concrete thing that's been there—I've been there for six years and it's probably been there about that time. I know for a fact that the Sheriff's daughter, she lives out there and she tried crossing when the water was running. She didn't know how deep it was. She got stuck in there and her car—she had to be towed out. Her car got totaled. And I'm a police officer out there and I'm subject to call to come back to the city and if I get stuck on one side or the other, if I get stuck over there and I can't come into work then—. And also there is a firefighter out there, an inspector, and if he get stuck out there when he's called we can't get across.

And I think it is very unsafe for us living out there at this point. If I'd have known it was that bad, I wouldn't have bought out there, and it's not affordable housing where I live. I built the house out there. And I think the people that sold the property to those other ones that are moving out there and there's still people building out there or putting mobile homes out there are unaware of what they're going to get this summer, or this spring when we do get a runoff, because it is going to be very bad.

And also, when we do get the mud out there, somebody out there, I don't know who, one of the homeowners owns heavy equipment, and he goes out and cleans out the low-water crossing because the County won't because it's not adopted by the County. So if that guy doesn't take it upon himself to do it, we just have to live with it and it's really damaging to our vehicles.

Also when we had that last snow storm and there wasn't much but it was enough to make it difficult for some people that they couldn't even make it up one side or the other. They got stuck in it. I don't know if you've been out there and seen how steep it is, but when you go down it and you're on the bottom, somebody's coming from the other side they won't see you and they could slide into you and hit you down there in the low-water crossing area because they won't see you until it's too late for them to stop. I think that's it. Thank you very much.

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CHAIRMAN DURAN: If I could just ask you to help me with something here. I'm trying to figure out what would be the best thing to do. I don't think that anyone who owns this property is going to spend half a million dollars building two bridges to realize less than that in lot sales, or even if it's the same. So I'm not sure—I'm wondering if we don't approve this tonight then the situation that exists out there will probably exist for a long time until we actually find a way of dealing with it and coming up with a reasonable solution. Because I don't think anybody, even if Mr. Brown sells it to someone else, the requirement is going to be the same, half a million dollars, I mean the formula is going to be the same, half a million dollars to realize, perhaps the same amount of money in profit.

So I don't think anyone's going to do that. What are your thoughts on if we were to get Mr. Brown to improve that section of the road to the crossing on both sides of the County road and then the County would make a diligent effort to try and find some funding and maybe we won't get it this year or next year or maybe not even the following year, but if we keep on trying, I think you would be amazed how much—I think you would be amazed that we would be able to do this.

So I guess my question to you is what do you think about that solution versus not doing anything and that situation existing for who knows how long?

MR. SANDOVAL: I think that concrete pad that's out there is real, several feet thick and at this point I think all they need to do is put the round culverts on top of it and just—I don't think it's going to cost half a million dollars or a quarter million dollars for it. It's only going to take a few culverts in there to put them together there. That concrete pad is already shown that it's not going to go anywhere with all these rains we've had.

CHAIRMAN DURAN: But you're talking about a bridge spanning that big dip.

MR. SANDOVAL: Maybe just enough on the lower area of it. Just enough to—well, it's not going to be level because they're so steep but enough to where it's all of the main arroyo area.

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER TRUJILLO: I don't think that we can address the problem with a Band-Aid effect. You say that there's a lot of debris and trash and branches coming from upstream. The first time that it rains it's going to clog those culverts and those culverts are going to land down the Rio Grande. They're going to go over. They're not going to serve the purpose. It has to be a well designed project and it's going to cost a lot of money.

MR. SANDOVAL: There's already a bridge over there on Los Pinos Road before Sunrise that was put in there and it hasn't gone out. It takes a lot of the debris, because the debris ends up on the road, on Los Pinos Road.

COMMISSIONER TRUJILLO: But it has to be well designed and it's

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going to cost a lot of money.

COMMISSIONER GONZALES: I think that's what Commissioner Trujillo is indicating that if we just were to put up the culverts that it would still cause a problem. He's advocating for what you're advocating, which is to have bridges built, because everyone is acknowledged that's the best case. I think what I'm hearing the Commissioners say is that if this wasn't approved tonight then the developer would just—you would continue to see happening out there what you've seen happening over the last six years, which is nothing taking place. It wouldn't develop. They'd wait for whatever, until they were able to get the money.

I think what Commissioner Duran asked you if it's better if we got them, if they went and they improved the County road and the County went and tried to pursue funds to build the bridge that both you and Commissioner Trujillo talked about, it seems like that would be the best case. The best thing would be what you're advocating for tonight would be if the developer would just say Yes, we're going to pay \$500,000 to build the two bridges but they're saying tonight, we're not. We can't do it. We won't do it. Commissioner Duran is saying they don't have the financial incentives. So the question is how do we get to the point where we can build those bridges? The only way we can build those bridges is if the County owns the roads and what they had proposed tonight, the way the County would own the roads is that the developer would build the roads from the County road up to the standards and the County would take them over, and then the County would have to address the issues that you talked about tonight.

Whenever there's mud on the low-crossing, it would have to be a County issue because it would be a County road. All those things would have to be covered by the County until the bridge was actually funded and then built, is what I understood the proposal to be tonight, what I understood Commissioner Duran to ask you, if you thought that that was a logical scenario to go, minus not having a developer willing to put in the bridges.

MR. SANDOVAL: Well, I understand that we shouldn't put it all on the new developers, because this should have been addressed way before you guys but it goes by somehow. And I don't know. If we have to live like that and like you guys said, the liability falls back on the County, if the medical personnel can't get across to somebody on the other side, then the liability comes back on the County. But how much is it worth? A life or the real costs.

CHAIRMAN DURAN: We have liability right now that we need to deal with. Even if we don't approve this we have liability.

COMMISSIONER GONZALES: I think the liability is what you just described. We've got to fix it.

MR. SANDOVAL: The rest of the road is pretty much up to standards. It's just that low-water crossing that's causing the problems. I don't know how you do it in Pojoaque but this is the only way in and out and if your kids are somewhere or if you have a family member sick at home and you've got to get them out of there, I don't know

what you'd do. You'd probably risk going through that low-water crossing even though you know that you shouldn't. You've got to get them across it. You can't just leave your kids somewhere. You have to go pick them up.

CHAIRMAN DURAN: All the more reason to try and do something about it.

MR. SANDOVAL: Right. Thank you.

CHAIRMAN DURAN: Next speaker please.

ROBERT ROMERO: Mr. Chairman, members of the Commission, I'm Robert Romero. I'm here speaking on behalf of the La Cienega Valley Association Board tonight. I'd like to give you a little history. I understand you already have a letter that was submitted before you. But back in 1998, Jim Siebert and Mr. Brown came before our community association board, which I'd like to point out is not an authoritative board but merely a community association which development was directed down to meet with the community and address some of our concerns.

At that point in time we did meet with Mr. Siebert and Mr. Brown and we reviewed his plans and I think they also were afforded a couple extra lots within that master plan when it was approved, to my recollection, although I'm not exactly sure of that at this point. I can tell you that these conditions were imposed at this point in time, which they were in total agreement with and that was one of the reasons why our association moved to recommend approval to this Board for this particular master plan.

Our association was put together to address infrastructure issues such as this and address community concern and this is one of our community concerns. Back five years ago and then once again, nothing was done out there on this property and came forward just as recently as last year for an extension, which our association then once again supported that extension based upon these conditions. Now we stand here before you with a variance, which was not brought to our community or our association aside from the review board, although the review board has been recently put in place and I'd like to go ahead and read this letter into the record, although you already have it so that members of the public also watching on television and in the audience are aware of our concerns here. I'll proceed to go ahead and read that letter. [Exhibit 6]

An amendment has been requested by the developer Jim Brown to a condition of preliminary plat for Vallecitos de Gracia which required two all-weather crossing capable of accommodating a 100-year storm. The amendment will result in a variance of the County Land Use Development Code which we believe would set an undesirable precedent for our community. The Board recognizes that—the Board of the LCVA, which is our community association—recognizes that in December 2001 the LDRC, which is the local development review board, was against, voted in support of the variance and though we respect the role of the board, because of the safety issues associated with this matter, we disagree with their stance and respectfully ask that their decision be reconsidered by the Board of County Commissioners.

The board asks that the County Commission consider the following points: The

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see how they would like to—it they could contribute.

CHAIRMAN DURAN: I'm sure they'd be happy to do that.

MR. ROMERO: I can't speak for them right now because I haven't asked them the question. And I'm not trying to be disrespectful or anything but I'm just trying to offer some suggestions. This wasn't offered to—we weren't able to discuss this as a community because we didn't have the opportunity to meet with the developer prior to his—

CHAIRMAN DURAN: All I'm really trying to do is find a way of solving the problem out there and if you have something that works, I'd love to hear it. I don't think that asking the people who live out there to contribute \$5,000 to \$10,000 to this that this is going to work.

MR. ROMERO: Well, let me elaborate a little bit here like I was hoping to do. I guess to answer your question, I became aware that the current property owner is in litigation now with the owner, the prior property owner that sold him the land for failing to, I guess I don't know what it exactly is but in regards to this arroyo crossing, I think that this variance will pretty much be giving them a means for a settlement for unsafe road access to not only just this subdivision being proposed here but the subdivision that was proposed before and approved and I think at the time, these subdivisions were approved before the inception of the La Cienega Valley Association and I think they may have been approved before the requirements that were put in place by the County.

But you look at the crossing at Los Pinos Road and I think that's a fairly cost-effective way of maybe dealing with this problem. I don't really think it's a Band-Aid solution. At least it offers reasonable access during a storm event. Not a 100-year storm event, per se, but an annual storm event. It is providing right now for the community of Upper La Cienega, that crossing that's there on Los Pinos Road just north, just west of this project. And it is a County road and the County constructed that and I have to say that it's served its purpose. I really think that that particular project if assessed would probably serve the purpose here rather than the \$250,000 bridge. So I don't know if that answers your question, Mr. Chairman, but I think the community is open to finding a solution to this and I don't think that by denying this variance is going to end that. I think the community, especially the La Cienega Valley Association would like to remain pro-active in finding the solution to this problem.

But by granting this variance you're just prolonging it as well, as I see. State funds may or may not happen, but in the meantime what are we going to wait for an accident to happen like on 599 before the intersection got improved over there with lights and proper lighting and traffic lights? Several people were killed there before state funds became available and the problem was recognized as something to be spending state funds on. So I don't know. I really kind of don't know what to say to you on that. I think that by granting this variance isn't going to solve the problem either. I think we really need to bring this back to the community level and really focus on getting it down rather than relying on state funding to make it happen.

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only testimony regarding this crossing to the LCDRC was against the variance by both the County Fire Chief and the La Cienega District Fire Chief. The developer did not meet with the LCVA regarding this variance as it was a condition of approval for the master plan, for development when they met with us back in 1998. I'd like to elaborate on that a little bit. I think some of the discussion here amongst the Board members, members of the Commission, has been positive and I think if they would have chose to have met with the association, I think some of this discussion could have taken place on a community level and I think in regards to the applicant bearing all the costs I think in some regard that may be unfair in some points of view but at the same time, he did agree to this back in 1998 and he didn't seem to have a problem with the cost at that time.

All right, I'd like to proceed. Affected community members stated that the time of the LCDRC meeting hindered participation due to work commitments, myself included. At the LCDRC November hearing the County Attorney stated that liability in the event of an incident on the crossing it would become the liability of the County if improvements were not made and a variance was granted. I was not at this meeting so I was taking it based upon what I read in the minutes.

We ask that you please continue to consider the importance of the Land Use Development Code and its role n the safety of our community. The board respectfully requests that the voice of the community members be considered and the variance not be granted at this time. I think there are some options out there. I think the most, the crossing with the most concern is the northern crossing where residents already exist to the subdivision to the north. The other crossing, I think, to the south, provides for alternative access. This other northern crossing does not provide any alternative access whatsoever, leaving these people basically trapped in the event of a not even a 100-year flood, just a downpour in Santa Fe.

That needs to be considered. The people out there, I don't think were disclosed the amount of water that travels down through this arroyo on this crossing when they were sold these lots out there and these guys invested a lot of money in building their homes and making their home out in La Cienega, only to find that much to their dismay they were trapped during spontaneous floods. And should a flash flood occur, somebody could very well get caught in an arroyo.

I'd also like to point out that these lots could be split further and there could be a lot more homes put up in there. There's been some mention of covenants and covenants granted are put in place to prevent that from happening but family transfers are mandated by state law and I don't believe the County has authority of really regulating or denying family transfers as long as they're legitimate. But that's something I'd like to mention as an aside.

I also would like to mention that the amount of water coming down from the City of Santa Fe is a lot more than it usually was historically. We're probably getting more of like a 100-year event, more like every ten years these days considering the amount of storm water runoff coming from the City of Santa Fe. And I think if this was to have

come to the community, the association has had a very good reputation of working with growth and development as it's coming into La Cienega and certainly we have received criticism from members of the community for working with developers to find positive outcomes to some of these problems that growth and development impose upon the community and I think we've been very effective and I think this Commission recognizes that.

Maybe a 100-year crossing and a \$200,000 is a little unreasonable but I'd like to go back to the crossing at Los Pinos Road. There is a crossing there that is somewhat of a river crossing similar to the one that we have in place on this particular development, but it has culverts through it and it's capable of handling a much smaller storm and enabling people to traverse the crossing during a much smaller storm which cannot be done at this particular development.

Also Commissioner Duran, I really think there is something to be said about your recommendation. To be putting this off is just delaying the problem but I think your recommendations are good but at the same time I feel that if we wait for the state it may not happen. I agree with Commissioner Campos. Right now, there was an individual that died down there as a result of an unsafe County road just this last summer. He went off into basically the arroyo there into the La Cienega Creek, his car overturned and he was left there for almost two days and the man died as a result of a guardrail not being in place.

I went out and met with the County Road Department out there on many occasions and concern of this guardrail and nothing every transpired of it. I'm concerned that somebody's going to get hurt out here in this crossing. I stand before you as a representative of the association and a member of my community and I think we need to take this matter seriously and if you approve this variance tonight I think you'll be making the wrong decision because state funds may not appear as fast as we might like them to. There's a lot of other safety issues down there in La Cienega and the roads, as I just mentioned and I really think maybe an alternative access should be looked at possibly and I don't think we can consider the interchange across 599 as being that alternative because that may not transpire as well for another 25 years.

So I would really like to say that we are adamant about asking that you deny this request for this variance at this point in time.

CHAIRMAN DURAN: Robert, I have a question. So we don't approve the variance. How do you suggest that we take care of all those people that are living out there now?

MR. ROMERO: Let me go into some more detail. Right now I became aware—

CHAIRMAN DURAN: I'd like for you to just answer my question please.

MR. ROMERO: Well, okay, I'd like to elaborate to answer your question. I think the suggestions that you made are, can be headed in that direction but as for state funding I don't think we should wait for that. I think we should try to find funding within the County right now or maybe even get with the residents out there and assess them and

I think if a variance was to be granted it should be granted to construct something similar to what the County has put in place across Los Pinos Road rather than just leaving it as it is because you're not leaving these people any alternative but to try and cross that arroyo in a case of emergency and somebody's going to get hurt. That's all I have to say.

CHAIRMAN DURAN: Thank you, Robert.

COMMISSIONER CAMPOS: Mr. Chairman, could I question for Mr. Romero?

CHAIRMAN DURAN: Sure.

COMMISSIONER CAMPOS: You mentioned litigation. Could you tell me a little more, give me a little more detail?

MR. ROMERO: By litigation I believe, I don't know, maybe the applicant could elaborate on that. I'm not too familiar with it I was just made aware of it a few days ago. But I understand that they're in litigation with the prior property owner in regards to this particular river crossing.

COMMISSIONER CAMPOS: Who's suing? The people that live to the south of this property?

MR. ROMERO: No, I believe it's the applicant is in litigation with the property owner that sold him the property. I guess their attorney is here tonight also. I'm not too familiar with it, Commissioner Campos, but I thought it would be worth mentioning.

COMMISSIONER CAMPOS: I think that's an important detail.

COMMISSIONER TRUJILLO: I think that's hearsay and we shouldn't even consider it.

MR. ROMERO: Well, you can ask the applicant and confirm it. I don't know.

CHAIRMAN DURAN: What does the litigation have to do with what we're talking about tonight?

MR. ROMERO: I've been giving you my personal point of view. Like I stated before, I think it would result in a settlement for an unsafe road.

CHAIRMAN DURAN: Okay. Thank you, Robert.

COMMISSIONER SULLIVAN: Mr. Chairman, I had a question for Mr. Romero. Robert, you said that in the south part there was an alternate access. Could you explain how that works? Or maybe Mr. Siebert could do that, either one.

MR. ROMERO: Right now I don't think anybody's served by that area. Maybe I need to look at that map again, but—

COMMISSIONER SULLIVAN: There's an alternate access to this—

MR. ROMERO: Can I take a look at that, please?

COMMISSIONER SULLIVAN: Sure. Is there an alternate way? You say in the north there's not. I can see from the map that it's a dead-end up there.

MR. ROMERO: There's roads coming in from the frontage road and the racetrack area where this area here, there's no way out.

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COMMISSIONER SULLIVAN: Right. Okay. That's the south. You said there was alternate access on the south. So what you meant is there's alternate access

MR. ROMERO: Right now this area is undeveloped.

COMMISSIONER SULLIVAN: There's no homes in there at all?

MR. ROMERO: I think you would have to [inaudible] They're going to have to cross an unsafe river crossing.

COMMISSIONER SULLIVAN: Is that the same owner on the south parcel? The same owner to the south owns the north piece? No, I don't think so. This is—you're saying that that's the worse case.

MR. ROMERO: This is the worst case.

COMMISSIONER SULLIVAN: But they've got some alternate access.

MR. ROMERO: No, they have no alternate access.

CHAIRMAN DURAN: And that's where the highest density is.

MR. ROMERO: The highest density.

CHAIRMAN DURAN: More homes, I should say.

MR. ROMERO: More homes.

COMMISSIONER SULLIVAN: That's also the side that goes towards 599.

MR. ROMERO: I'd like to state that I'm not here to [inaudible]

CHAIRMAN DURAN: So are we.

MR. ROMERO: I really can't say what the answer is at this point in time. I just merely offered a few suggestions and I really think if this was brought forward to the community we could have explored it before it got here and—but to tell you the truth, we gave our recommendation for approval as an association to this board based upon these conditions and we feel that it's our responsibility to stress the safety concerns out here. I think it's your decision to make as to what you feel is the best alternative to this problem that we're having.

I may be right. I may be wrong as to what I'm suggesting for you here tonight but I think that's your decision to make and I thank you for your time.

CHAIRMAN DURAN: Thank you. Mr. Siebert, I have a question for you. Isn't it true that the two subdivisions on either side of this subdivision were approved without this requirement and in the middle of Mr. Brown's submittal, the ordinance was changed and that's why he got stuck with the bridge requirement?

MR. SIEBERT: That's correct. When it transitioned from Extraterritorial to being within the local, within La Cienega Local Development Review Committee then it was subject to County standards and the County standards require a 100-year crossing. So that's correct.

CHAIRMAN DURAN: And that's—so the other two got their approvals prior to that occurring.

MR. SIEBERT: Not only prior to that but under the Extraterritorial standards rather than the County standards.

CHAIRMAN DURAN: Okay. So we, the County had something to do—let

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me back up. Just the process that took place out there had something to do with the problems that exist today. Changing from the EZO to the County requirements created this problem and I think that—I don't know. My feeling is that we should try to find some way of making everybody whole out there. I don't think it was the developer's—I think the developer got caught in this transition and was stuck with this requirement. At the same time, all the people that live out there right now and have owned lots and are planning to build out there, if we don't get pro-active with this situation, this situation is going to continue and it's going to be unsafe and our exposure I think remains the same.

I think that if we get pro-active with it, we are at least showing some signs of working towards resolving the problem.

COMMISSIONER GONZALES: Mr. Chairman, Mr. Siebert, looking to the upper part of the map, do people on the lots north of the Chamiso flood plain, north for this map of the Chamiso flood plain, do they have alternative routes out from, rather than having to go through the crossing?

MR. SIEBERT: No.

COMMISSIONER GONZALES: So right now, does your client—right now your client is allowing them to go through his property and go through that low-river crossing?

MR. SIEBERT: Correct. And I think what happened is when the subdivision to the north came in, that there is an existing platted 50-foot easement across this property. So within this overall tract of land there is already an easement, just like there's an easement for a right-of-way for County Road 54, there's an easement there for Paseo de Angel.

COMMISSIONER GONZALES: So when that easement was granted and there was a standard set for that easement when that subdivision north of the Chamisos flood plain came in, did that easement require that this bridge be built?

MR. SIEBERT: No. Because that is the condition for the type of improvement that was associated for the—Arroyo de los Chamisos was associated with a condition on the subdivision to the north.

COMMISSIONER GONZALES: Which required—

MR. SIEBERT: It was an off-site improvement.

COMMISSIONER GONZALES: So to the point of what Commissioner Duran indicated tonight, if we were to table this or deny it, the people in the north of this, still, their only alternative is to go through this route.

MR. SIEBERT: Correct.

COMMISSIONER GONZALES: And if your client decides to do nothing, and leave it as it is, are his options, if there's a concern for liability would be to close it? Could he close that down? Or would the County—Chris? Let me just ask this question and take you off the spot on that. There's a—this is the proposed development that's coming forward, right? The only exit that people up here can make is to come through an easement. Could this individual deny these people to get through this right now if he was

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concerned about liability issues? Because it's a public access?

MR. GRAESER: Probably not.

COMMISSIONER GONZALES: He could not.

MR. GRAESER: I can't say for sure but probably not.

COMMISSIONER GONZALES: So the fact would remain that if your client didn't do anything, the road would still remain unsafe, basically.

MR. SIEBERT: Correct.

COMMISSIONER GONZALES: So that goes basically to the point that Commissioner Duran was bringing up.

COMMISSIONER CAMPOS: There's another point. He's putting more people on the road, to risk from his own development.

COMMISSIONER TRUJILLO: But if he pulls back, the situation remains status quo in perpetuity. Forever.

COMMISSIONER CAMPOS: Not necessarily.

COMMISSIONER TRUJILLO: Nothing changes.

CHAIRMAN DURAN: What's your solution to the problem?

COMMISSIONER CAMPOS: I think this is a problem for the developer? I don't think—if this thing doesn't get approved, I think he probably could return the property to the owner, there's probably some protection. This is a risk that he's taken understanding the dangers and he's exposing people, in the subdivision he's creating, putting more traffic into a dangerous situation, so I would be concerned about that.

The solution is to table this and think about it in a big picture way. We shouldn't be driven to make half-million dollar decisions because somebody wants to make a subdivision in a place where there probably should never have been a subdivision in the first place. All these crossings, why weren't they dealt with earlier?

COMMISSIONER TRUJILLO: A subdivision is already there.

COMMISSIONER CAMPOS: It was, but this area probably wasn't suitable for subdivision, so let's look at in the long-term perspective. Our priorities, where's the money coming from? Who's going to pick up the liability? You accept this piece of the road? You're accepting the liability for the County.

COMMISSIONER TRUJILLO: We need to be pro-active.

COMMISSIONER CAMPOS: We have to be pro-active.

COMMISSIONER TRUJILLO: And address the health and safety issues.

CHAIRMAN DURAN: Time out. Time out.

COMMISSIONER CAMPOS: Let's table it and think about it.

CHAIRMAN DURAN: Make a motion to table it.

COMMISSIONER CAMPOS: I move to table it.

CHAIRMAN DURAN: Is there a second?

COMMISSIONER SULLIVAN: I second. Mr. Chairman, I know you normally don't have discussion on tabling—

CHAIRMAN DURAN: And we're not going to. So, those in favor signify

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by saying "aye."

COMMISSIONER GONZALES: And I want to give Commissioner Sullivan a chance to go with his point on that.

CHAIRMAN DURAN: That's fine.

COMMISSIONER GONZALES: Because I'm open to consideration of the tabling if I know where it's going, but I don't.

COMMISSIONER SULLIVAN: Where I was thinking of going, Commissioner Gonzales, is we had a similar situation on a smaller scale out on Avenida Amistad in Eldorado. It's a low-water crossing and the residents wanted a permanent crossing. And they did a low-water crossing with asphalt out there. James Lujan and his crew went out there and did a cost estimate and took a look at it to see what it would cost and I think the cost was about \$80,000. And in fact they got funding for it in this state legislature, one \$40,000 bill in the House and one in the Senate. So we were actually successful. If the Governor signs it, of course. That's an if.

Nonetheless, I sure would like to have Public Works take a look at this. See what alternate—because we're really looking at kind of—we're doing their engineering for them here, which we probably shouldn't be doing but I think we can certainly extend a helping hand to have the Public Works Department take a look at it, see what they think the costs would be, see if there are any other alternatives, other than the ones we've dreamed up here. See whether that's potentially a solution, accepting those little pieces of County roads.

And I think if we had a Public Works recommendation that all the reasonable alternatives had been investigated and there aren't any, then I feel very comfortable saying we've got a lot of other people that are out there and we've got to do something to help. As Commissioner Trujillo says, we have to be pro-active. But I sure would like to get a more technical opinion than just a rough guesstimate of \$250,000 because I think that's way high.

CHAIRMAN DURAN: I have an idea? What is wrong with designating these lots, create conservation easements for these five lots? We would give you approval for the subdivision, create these lots as conservation easements with the understanding that if you can deal with this water crossing some time in the next two to three years to the satisfaction of this Commission, you could—you wouldn't be able to sell them for two or three years, and at the end of say three years, they just become conservation easements. But it gives you three years to deal with the problem.

And it's a tax credit. It comes off the profit. I think—there are a lot of people using conservation easements for tax purposes. That would be one solution. That would be one suggestion. The problem with that is it still doesn't deal with the problem that exists with the other lots up there. So I really think that we need to do something relative to protecting and taking care of those people that found themselves in a subdivision that was approved at a time when the ordinance didn't require bridges. It's unfortunate that that occurred. Maybe the bridges should have been a requirement a long time ago, but the

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fact of the matter is that they weren't and we just really need to get pro-active about it.

I think that tabling this thing is not being pro-active. I think the solutions to the problem are evident. We need to do something about it. Did you want to say something, Jim, about that conservation easement suggestion?

MR. SIEBERT: Mr. Chairman, Commissioners, I think as you pointed out it really doesn't do anything to address the problem as it stands today.

CHAIRMAN DURAN: So, I didn't ask if Mr. Romero was the last person that spoke. Is there anyone else out there that wanted to say something? Mr. Brown, did you want to say something.

COMMISSIONER GONZALES: Let me just ask a question of Mr. Brown. Mr. Brown, you can quite understandably understand the frustration that's going on with the community and the Commission in trying to get this thing resolved. I think there are many people—the majority of the people and I heard this from the leader of the La Cienega Valley Association understands the predicament you're in. With the tabling, is there a willingness for you to sit down with whoever you need to sit down with to determine what other options might be available. It might be density transfers that might require another variance in terms of septic use or alternative access or doing what Commissioner Duran had talked about, allowing some time to maybe, at least the next month for us to do some cost estimates and seeing how we can address this issue, because this issue, as Commissioner Sullivan and Commissioner Trujillo have aptly indicated it, it's greater than you and it's greater than the subdivision.

But you, regardless of the fact, are involved in it, because you've got your subdivision at this point. So however the solution comes forward, I think that we're all asking that you be a part of this solution, recognizing that there are constraints in place. So if there was a tabling, is there a willingness on your part, do you believe, to try and find ways to help address this situation, minimize the amount of traffic that could potentially be taking place by exploring conservation easements or looking at possible density transfers so that you don't have to necessarily increase the traffic. Doing a number of those things that create flexibility for you to proceed forward, because it's been some time that this has been in place. And then the County also being able to work more pro-active in trying to address the building of these bridges.

And the only way that we're going to be able to get public participation in these bridges is if you were to dedicate these County roads, or if you were to bring these roads up to County standards and we would dedicate it. I'm assuming you're probably going to need to look at some of the costs of that as well. So I guess my question to you is if you're willing to wait to explore that, as opposed to us making a very quick, rash decision tonight.

JIM BROWN: Well, the answer is obviously yes. We're absolutely, I'm absolutely willing to explore any possibility that we can come up with to resolve these issues, not just for my subdivisions but for the others. As a matter of fact, that's been one of our problems is that if we got a variance, what liability would I have for the other

subdivisions, not just mine, but the others. So there's quite a bit of legal questions which the only way you can argue them out is get in court, which is too expensive.

So absolutely, we'd be willing to do that. Now, I'm not the only party involved, as you know. More depends on their cooperation with me than my cooperation with the County. I'm willing to do—I build houses for a living, I'm not really a developer. But I'm willing to do most anything we can to resolve this, not just for our subdivision, but for the others.

A couple things I would like to clear up and the reason I wanted to speak was it was my understanding and still is my understanding and I don't think it's a point, but I want to clear it up anyway, that the ordinance in place in 1991 would actually place the same requirement and restriction on the subdivision as is in place today. The only difference between the original ordinance and this one is the clarification of going from a dip section to a water crossing. And that clarification was 100 cubic feet per second. And that is the only difference that I can see in the two. I think all the hydrology reports that we submitted originally confirm that it's over 100. So I wanted to clarify that point.

The other point I wanted to clarify was—I'm not familiar with the gentleman's name—Mr. Romero. I believe we met with him in 1995, not '98 and we worked out some great things with the community. Those people are great people. And when we sought for a variance, we sought for a variance laboring under the assumption that the condition existed in 1991 as it did today. But in that meantime the County switched gears on us so there was no slight to the community. So I wanted to clear up that.

And other than that, we're going to do whatever the County wants to do on that.

COMMISSIONER CAMPOS: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER CAMPOS: Question for Mr. Brown. You have people who subdivided north and south of you. Is there any way of talking to these people about maybe getting them involved in paying for these crossings also, since they are dangerous and they're servicing people they sold lots to.

MR. BROWN: I know the fellows who subdivided those, but they've sold those off. Their responsibility—

COMMISSIONER CAMPOS: They're still subdividers and they may, if they sold something in a situation where you have dangerous conditions, don't you think they may have some liability outstanding? Of course they may have insurance for that.

MR. BROWN: I've discussed that with them. I can't get a response out of them on that. But to answer your question directly, I can run it past them.

COMMISSIONER CAMPOS: I would think that would be worth our time. I think these subdividers bear responsibility to the people they sold these lots to, and it shouldn't just be a public responsibility. I would suggest that you talk to these folks if we indeed table this. And have them pay their fair share.

MR. BROWN: I can't speak for them, obviously.

COMMISSIONER GONZALES: I just wanted to ask the Chairman a

question, where he was going with his point of a conservation easement. It seems like everything is being held up for five lots, the five lots that would be increasing the intensity that Commissioner Campos is talking about. I don't think anyone's disputing the rest of the property, from the La Cienega Valley Association or anyone else, that the rest of the lots, if they were approved and moved forward would be accessed off County Road 54 it seems like. Is that right, Jim?

MR. BROWN: Could you repeat that please?

COMMISSIONER GONZALES: With the exception of the five lots, everything else is going to be accessed off main County roads and so was the Chair going down the direction of being able to allow things to progress in those areas, at least on those lots and then with the five, looking, holding off on the actual platting of those lots until there's some resolution, so that there's the ability to proceed forward and you're not holding up the entire subdivision for the five lots. Because everyone's focused on the five lots that we're needing to access through this low-water crossing. The Commission is focusing on everyone else who are having to use these low-water crossings where they can become dangerous.

So we need to move fairly quickly to get to that point, but it seems to me that if we're going—that we might be able to find a way here to allow some progress to take place and still keep you engaged in trying to solve the problem that the low-water crossing is taking. And I don't know how to do that. I don't know if the Chair was going down that route when he was proposing that those five lots would be in the form of a conservation easement until there was—

CHAIRMAN DURAN: Or they could just not be platted until this thing's resolved.

COMMISSIONER GONZALES: Or they could not be platted until there was a resolution that was brought forward and so we're not looking for a forced answer and it allows for time and Commissioner Campos talked about to look at the bigger picture and how we address these lots. But no one's disputing the rest of these lots. I haven't heard any dispute about the rest of those lots. I haven't heard any dispute about the impact of those lots.

COMMISSIONER TRUJILLO: So we would not be voting on tabling the whole project. We'd be voting on tabling just those lots.

CHAIRMAN DURAN: No, it wouldn't be a table. It would be approval, but holding back on the platting of those five lots.

COMMISSIONER TRUJILLO: That's what I mean.

COMMISSIONER GONZALES: Because it goes directly to your point.

COMMISSIONER CAMPOS: They already have the plat approved. They're asking for an amendment to grant a variance.

CHAIRMAN DURAN: So they replat it. Whatever it takes. You replat it. But the problem, the other thing is that we would still have to ask that they improve that section of the road on either side of the County road so that we can—

COMMISSIONER GONZALES: That's got to be part of the overall solution to get it to the point of where the County can ask for funding.

CHAIRMAN DURAN: We just can't approve it and then he hangs on to these five lots forever and nothing ever happens. I would be willing to support something like that. Either you don't—you either replat it or put a restriction on them on the plat that they cannot be sold until some document's been recorded. Are you listening to me Chris?

MR. GRAESER: Mr. Chairman, I am listening. We're discussing whether we'd be able to do this now or whether we'd have to come back with a plat amendment.

CHAIRMAN DURAN: I'm suggesting that we just put on this plat that these five lots couldn't be sold unless some kind of a document was recorded releasing them from the County and that document would stipulate that the low-water crossing issue had to be resolved satisfactorily to the County Commission before this document could be recorded allowing them to deed out these five lots.

MR. GRAESER: Mr. Chairman, I think that's probably a reasonable restriction on the property, that this variance is coming forward as long as the applicant agrees to it.

COMMISSIONER GONZALES: We wouldn't be granting the variance though. I think what we're doing at this point is we're allowing—well, maybe we would be. What we're doing is we're holding off. To me, I understood the variance as being for the low-water crossing, but we're also wanting to engage in the issue of the low-water crossing and it may be something different. It may come to a point where we all decide, based on whatever Public Works says or we decide to go for funding that we're able to go forward for a bridge or some alternative, or whatever might take place.

But maybe it is to the point of a variance but I thought, my point is to allow the lots to go forward that aren't in dispute and hold off from platting or issuing building permits for the five lots that are required to move the low-water crossing is what I was wanting to do, is to hold off until we found a resolution. So you're not really taking away the requirement of the low-water crossing. You're still holding it in place until we figure out how we're going to—

CHAIRMAN DURAN: To access those other lots. It would either require a variance or—

COMMISSIONER TRUJILLO: Is there a motion?

CHAIRMAN DURAN: Actually, I think you guys get to table it with direction that they explore this.

COMMISSIONER CAMPOS: The only issue of today is a variance. That's all we noticed.

MR. GRAESER: Mr. Chairman, I believe the committee could grant the variance and a reasonable condition of the variance would be that you don't sell those lots until it's addressed to the satisfaction of the County. If without granting the variance you want to change the plat condition, I think you have to come back for a plat amendment.

COMMISSIONER SULLIVAN: Mr. Chairman, I think a plat amendment

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certainly would be cleaner because I count more than five lots. One of them has a big archeological easement on it. One of them's right in the middle of the Arroyo Chamiso, and then there's another one on either side. I count four on the north dip section and I count two on the south. I count six lots. Starting from the top, lot 18, lot 17, the one below 17, I can't read the number.

CHAIRMAN DURAN: Nineteen.

COMMISSIONER SULLIVAN: Is that a 19? The one below that, 21.

CHAIRMAN DURAN: Where are they going to build on 21?

COMMISSIONER SULLIVAN: I don't know but it's a platted lot. You'd be surprised where they can stick a trailer.

CHAIRMAN DURAN: I think they'd have to build there in the corner, or give that lot away.

COMMISSIONER SULLIVAN: I don't know but there's four there and then two on the other side by the Arroyo Hondo, lots 13 and 14.

CHAIRMAN DURAN: Or are they 14 and 15?

COMMISSIONER SULLIVAN: Thirteen and 14.

CHAIRMAN DURAN: Thirteen and 14. Sorry.

COMMISSIONER SULLIVAN: That'd be six. So I would exclude those six and give them direction to come back with a replat and a condition of that being that the grade those, improve those roads to County standards.

CHAIRMAN DURAN: The other possibility by tabling it is it gives you some time to think about whether you want to do that or maybe ask us to do some kind of—I don't know if we want to do a transfer of development rights. The problem—

MR. SIEBERT: Maybe, Mr. Chairman, Commissioners, maybe, I think Commissioner Sullivan is on the right track that maybe we do need to table this. There's just too many variables at this point. We table it for 30 days. Maybe the County Public Works could take a look at the two crossings and see if there's something on an intermediate stage that would allow for a crossing of most flood conditions but not the 100-year flood. What are the costs associated with that, and then at the same time, look at alternatives associated with how you deal with the lots, those particular five lots on either side of the arroyo.

CHAIRMAN DURAN: I think that there's a willingness on the Commission to try and deal with this issue from the community's point of view, the existing property owners and the developer's problem that he didn't create. He just found himself in the middle of.

COMMISSIONER GONZALES: Well, and the other thing is that if the developer chooses during this 30-day session to move the route that Commissioner Sullivan has recommended, replat, then you don't necessarily have to wait for the 30 days to come back. You would be able to work with the staff to start getting the noticing in place. And I would just ask the staff that they notify us if that's the route that you're going to be taking. In that case, just so we can move on, Mr. Chairman, I move to table.

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CHAIRMAN DURAN: And you would invite Mr. Romero to participate in your thought process there.

MR. SIEBERT: Certainly. I like dealing with Robert.

COMMISSIONER SULLIVAN: I second the motion.

MR. GRAESER: Mr. Chairman.

CHAIRMAN DURAN: Chris.

MR. GRAESER: For clarification. If we table it to a date certain, so that everyone who is interested here knows when it will be coming up next, then if the applicant ends up coming back with this instead of a different application, he wouldn't have to notice at all and redo all the legal noticing.

COMMISSIONER GONZALES: So we'll notice it for the next land use—

CHAIRMAN DURAN: For the next land use meeting next month.

COMMISSIONER CAMPOS: Mr. Graeser, this is a variance, right? If he comes back for replat it's a different issue. You have to notice it differently.

MR. GRAESER: Mr. Chairman, Commissioner Campos, absolutely. My only thinking was that if for whatever reason that doesn't work out or the applicant says, You know what? I want to get an opinion from the Commission on this, that way he wouldn't have to do all of this over again. So if we just say for the next—which I'm told is March 12th.

CHAIRMAN DURAN: Okay, those in favor signify by saying "aye."

[Unanimous] Opposed? Motion carries.

COMMISSIONER GONZALES: With the—Estevan, did you understand also the direction that Commissioner Sullivan had asked that we send Public Works out to do an assessment to see at minimal what's needed to get it safe and get some real costs into place? Okay. Thank you.

COMMISSIONER CAMPOS: Mr. Chairman, another issue I'd like to raise for staff, I'd like for legal and for the County Manager to explore the possibility of legal action against the other subdividers for some money to remedy this dangerous condition.

COMMISSIONER TRUJILLO: Take a look at that across the county.

CHAIRMAN DURAN: Let's take them all to court.

COMMISSIONER CAMPOS: Got to start some place.

CHAIRMAN DURAN: Okay, I need to ask the Commission if they would mind tabling executive session until tomorrow at noon or Friday at noon. There's only really two time sensitive issues and—

COMMISSIONER GONZALES: Tomorrow's good for me.

CHAIRMAN DURAN: Can you do lunch tomorrow?

COMMISSIONER GONZALES: I think so.

COMMISSIONER CAMPOS: It's not good for me.

COMMISSIONER GONZALES: Can you do it in the morning?

COMMISSIONER CAMPOS: Let's just do it.

CHAIRMAN DURAN: No, we're not going to do it.

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COMMISSIONER CAMPOS: You're not?

CHAIRMAN DURAN: Not tonight.

COMMISSIONER CAMPOS: You're the boss.

CHAIRMAN DURAN: Well, no, we're going to vote on it. I'd like to ask that we let staff go. It's 10:00. We have pretty much an understanding that we're going to end the meeting at 10:00 anyway. We have a couple, two more to go, so I'd like to ask the Commission to—

COMMISSIONER GONZALES: Can't the staff meet with us individually on these issues tomorrow and get with us to go through them?

MR. LOPEZ: Mr. Chairman, we probably could meet with you individually. We probably ultimately need direction from the Board.

COMMISSIONER GONZALES: You can't do it on a rolling—if you noticed a meeting all day tomorrow you can do it through a rolling executive session.

MR. GRAESER: I think you might run into the quorum issue.

COMMISSIONER SULLIVAN: Is this just for executive session?

COMMISSIONER GONZALES: This is just executive.

COMMISSIONER SULLIVAN: How about Friday?

CHAIRMAN DURAN: Friday works fine for me.

COMMISSIONER SULLIVAN: What about the other two tonight?

CHAIRMAN DURAN: We'll finish those two.

COMMISSIONER SULLIVAN: We'll finish those tonight. Because they've been here a long time.

CHAIRMAN DURAN: So Friday's okay? Friday at noon? Okay.

COMMISSIONER GONZALES: I think the majority will be there.

COMMISSIONER CAMPOS: I probably won't be able to make it.

COMMISSIONER GONZALES: Then can we join by phone in the executive session?

CHAIRMAN DURAN: Well, what time can you make it on Friday?

COMMISSIONER SULLIVAN: I can make it any time Friday.

CHAIRMAN DURAN: Commissioner Campos.

COMMISSIONER CAMPOS: It's not a good day for me.

COMMISSIONER GONZALES: I can join by phone on Friday.

COMMISSIONER SULLIVAN: What about Thursday afternoon?

COMMISSIONER GONZALES: I could do it Thursday afternoon too.

CHAIRMAN DURAN: Is there someday in the next few days you can do it? We need to do it by Friday, right?

MR. LOPEZ: Mr. Chairman, ideally we have two issues that we need direction on by some time on Friday.

CHAIRMAN DURAN: Let's just do it tonight. Let's just try and get to the point on the next two issues.

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XI. A. 5. CDRC Case #V 01-5510. Benny Zamora Variance. Benny Zamora, applicant, requests a variance of Article III, Section 10 (Lot Size Requirements) of the Land Development Code to allow a second dwelling unit on 1.4 acres. The property is located at 05 Taylor Loop within Section 5, Township 15 North, Range 8 East

MR. DALTON: There is currently one residence, a shop and a septic system on the property. The property is served by an onsite well that serves the existing home. The applicant states that the property has been in his property since 1983. The applicant also states that his father passed away in 1996 leaving his mother alone in their house. This has become a financial and physical hardship on the applicant's mother as she is fast approaching her retirement years. The family has decided to sell the house that the applicant's mother currently lives in in order to pay off the existing mortgage. The applicant's mother is dependent on her family because she does not drive. It is the applicant's wish to place a second home on the property for his mother to live in where she will be surrounded and cared for by her family.

Recommendation: Staff recommends that the request for a variance be denied. The intent of the Code is to set minimum lot size in this area at 50 acres. The decision of the CDRC was to recommend approval of a variance to allow two homes on 1.4 acres subject to the following conditions. Mr. Chairman, may I enter those into the record?

CHAIRMAN DURAN: Please.

[The conditions are as follows:]

1. A temporary permit will be issued for a period of five years to be approved for consecutive five- year periods by Staff. The applicant at that time must prove the hardship still exists.
2. Water use shall be restricted to a 0.25-acre foot per dwelling. A water meter shall be installed for both homes. Annual water meter readings shall be submitted to the County Hydrologist by November 30th of each year. Water restrictions shall be recorded in the County Clerk's office.
3. The applicant must complete the lot line adjustment before placing the mobile home on the property.
4. The applicant shall submit a revised Environmental Liquid Waste Permit showing correct lot size, and correct number of dwelling units.
5. The mobile home is not to be placed on a permanent foundation.
6. No additional permanent structures to be erected on site to support either dwelling.
7. The existing driveway will serve the proposed residence.
8. The applicant must follow all other building permit regulations including construction of a retention/detention pond.
9. Failure to comply with all conditions shall result in administrative revocation of the variance.

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CHAIRMAN DURAN: Is the applicant here: Please step forward and state your name for the record. Any questions of Wayne? Thank you, Wayne. Mr. Zamora, are you in favor, are you in agreement with the CDRC's recommendations?

[Duly sworn, Benny Zamora testified as follows:]

BENNY ZAMORA: Commissioner Duran, yes.

CHAIRMAN DURAN: Would you be opposed to another requirement that you don't rent the mobile home?

MR. ZAMORA: Commissioner Duran, that would be fine.

CHAIRMAN DURAN: Okay. Do you have anything to add?

MR. ZAMORA: Just that the existing site, all the utilities are there. For 14 years me and my wife lived in a mobile home there and we went ahead and built a new house with the conditions that we move the mobile home out and we've done that. It's been six to seven months that the mobile home has been moved out but things happen overnight and I'm asking for a variance to park a mobile home. Like I said, no construction is needed and it's a mobile and whenever it's not needed any more it will be wheeled out.

CHAIRMAN DURAN: Any questions of Mr. Zamora?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: So could you explain why you are selling your mother's home. It says just in order to pay off the mortgage. We'd all like to pay off our mortgage but I'm not quite clear as to how that constitutes a hardship.

MR. ZAMORA: My mom, she's in her mid-sixties and she has a mortgage of \$140,000 and currently it's very hard for her to pay that mortgage. And she would like to retire and she would just like to get away from it and stay at home and take care of her grandkids because now she's forced to work and it's a little bit of a hardship having to go and pick her up and take her to work in the morning. So we would like for her to just retire and take care of the grandkids. My father's intent was that for all of us to live together and that's what we'd like to do.

COMMISSIONER SULLIVAN: So her house is on a separate parcel somewhere else.

MR. ZAMORA: Yes, it is.

COMMISSIONER SULLIVAN: And on your parcel you had two mobile homes.

MR. ZAMORA: No.

COMMISSIONER SULLIVAN: You have one house and a mobile home which you just recently, six months ago, took off.

MR. ZAMORA: I lived in the mobile home for 14 years and we built a new dwelling, a new house and the mobile home since has been moved.

COMMISSIONER SULLIVAN: Is your mother, mid-sixties, is she infirm? Does she have a handicap or is she sick or ill?

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MR. ZAMORA: No. Not at all, Commissioner Sullivan. She just never drove or anything so she depended on us and I have four younger brother and since I'm the oldest I've taken responsibility and I asked for a variance because I'd like for her to be there close to her family.

COMMISSIONER SULLIVAN: Thank you.

COMMISSIONER GONZALES: Mr. Chairman, Mr. Zamora, is it your intent then to just have the mobile home in place as long as your mother would like to live there and then at the point that she chooses, she's gotten tired of your cooking so she can go back to her own place? Is that right?

MR. ZAMORA: Mr. Chairman, Commissioner Gonzales, no. We're selling her house to get rid of the mortgage and then I'm going ahead and putting in a mobile home if I get the variance. And the day comes that the good Lord comes and takes her to be with him, the mobile home will be moved out. It won't be on a permanent structure and it's just like it sounds; it will be mobile. I have no intent of renting it out or anything. My intent is to help out my mom. She cared for us and now it's time for us to care for her.

CHAIRMAN DURAN: Thank you, Mr. Zamora. This is a public hearing. Is there anyone out there that would like to address the Commission concerning this issue? Nobody for or against? What's the pleasure of the Board?

COMMISSIONER TRUJILLO: Mr. Chairman.

CHAIRMAN DURAN: Commissioner.

COMMISSIONER TRUJILLO: Move for approval of CDRC Case V 01-5510, Benny Zamora Variance.

COMMISSIONER GONZALES: Second.

CHAIRMAN DURAN: There's a motion and a second. Any further discussion? Those in favor signify by saying "aye." [Commissioners Trujillo, Gonzales and Duran voted aye.] Opposed? [Commissioners Sullivan and Campos voted nay.] Motion carries.

- XI. A. 8. CDRC CASE # Z 01-5470. Marianna Hatten Bed and Breakfast. Marianna Hatten, applicant, requests Master Plan Zoning with preliminary and final development plan approval for a three-bedroom bed & breakfast within an existing 6,816 square foot residence on 65.2 acres. The property is located at 29 High Feather Ranch, off County Rd. 55 (Gold Mine Road), within Section 31, Township 14 North, Range 8 East**

MR. DALTON: The applicant is requesting approval for a three-bedroom bed & breakfast within an existing 6,816 square foot residence. The existing property will not require any structural changes. The residence has a total of four bedrooms. The

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applicant is requesting to use three of the bedrooms for guestrooms for the bed & breakfast. One bedroom is handicap accessible.

Recommendation: Staff's position is that this application is in accordance with Article V, Section 5 and Article III Section 4.4 (development plan procedures) of the County Land Development Code. Staff recommends master plan zoning within an existing 6,816 residence on 65.2 acres.

The decision of the CDRC was to recommend approval of master plan zoning with preliminary and final development plan approval for a three-bedroom bed and breakfast subject to the following conditions. Mr. Chairman, may I enter those into the record?

CHAIRMAN DURAN: Please.

[The conditions are as follows:

1. The Master Plan / Development Plan will be recorded with the County Clerk's office.
2. All Staff redlines will be addressed, original redlines will be returned with final plans.
3. Water use shall not exceed 0.46 acre-feet per year. A water meter shall be installed on the well. Annual water meter readings shall be submitted to the County Hydrologist by December 31st of each year. The applicant shall provide bottled water for guests and disclose the elevated sodium levels so that any guest who is concerned about his/her sodium intake will be aware of the situation.
4. The applicant shall obtain a food preparation permit from NMED.
5. The applicant shall comply with all Fire Marshal requirements.
6. All outside lighting on the property shall be shielded.
7. All improvements, including parking area, and fire protection, shall be in place prior to recording of the Master Plan.

CHAIRMAN DURAN: Any questions of Wayne? Is the applicant here? Please step forward and state your name for the record and let the County Clerk swear you in. Hi. Do you have anything you'd like to convey to the Commission?

[Duly sworn, Marianna Hatten testified as follows:]

MARIANNA HATTEN: I hope the meeting is about over, but seriously, Mr. Chairman and Commission members, I'd like to get on with our lives. We started this process back in August and we're really eager to be a new business operating in Santa Fe County.

CHAIRMAN DURAN: Any questions of the applicant? This is a public hearing. Is there anyone out there that would like to speak for or against this proposal? What's the pleasure of the Board?

COMMISSIONER SULLIVAN: Mr. Chairman.

CHAIRMAN DURAN: Commissioner Sullivan.

COMMISSIONER SULLIVAN: I just wanted to—we were talking so much about wells previously for two hours, I just wanted to mention that this one has a 20-gallon

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per minute well.

CHAIRMAN DURAN: Why don't you give that guy earlier a few gallons?

COMMISSIONER CAMPOS: Move for approval, Mr. Chairman, with the conditions.

COMMISSIONER TRUJILLO: Second, Mr. Chairman.

CHAIRMAN DURAN: Any further discussion? Those in favor signify by saying "aye." [Unanimous] Opposed? Motion carries. [Commissioner Gonzales was not present for this action.]

X. MATTERS FROM THE COUNTY ATTORNEY

1. Executive session

a. Discussion of pending or threatened litigation

1. *Santa Fe County v. Town of Edgewood (Campbell Ranch Annexation)*

b. Discussion of possible purchase, acquisition or disposal of real property or water rights

Commissioner Sullivan moved to go into executive session pursuant to NMSA Section 10-15-1 (1 & 7) to discuss the matters delineated above. Commissioner Duran seconded the motion which passed upon unanimous roll call vote with Chairman Duran and Commissioners Campos, Trujillo, and Sullivan all voting in the affirmative.

[The Commission met in executive session from 10:05 to 10:55.]

Commissioner Campos moved to come out of executive session having discussed only the matters outlined in the agenda, and Chairman Duran seconded. The motion passed by unanimous voice vote. [Commissioner Gonzales was not present for this action.]

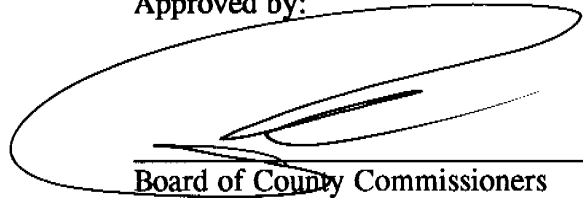
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ADJOURNMENT

Chairman Duran declared this meeting adjourned at approximately 10:55 p.m.

Approved by:

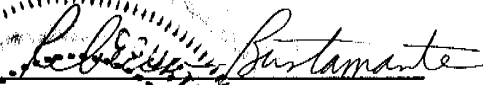


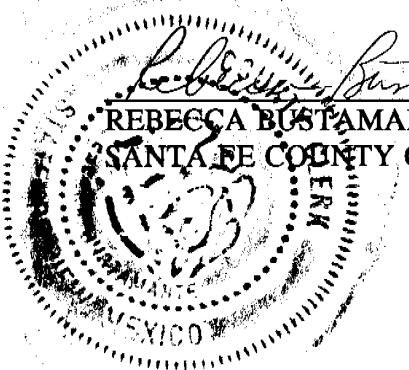
Board of County Commissioners
Paul Duran, Chairman

Respectfully submitted:


Karen Farrell, Commission Reporter

ATTEST TO:

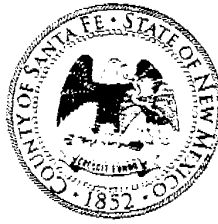

REBECCA BUSTAMANTE
SANTA FE COUNTY CLERK



Marcos P. Trujillo
Commissioner, District 1

Paul Duran
Commissioner, District 2

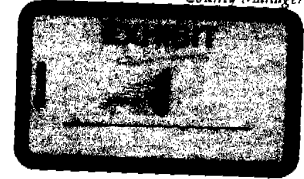
Javier M. Gonzales
Commissioner, District 3



Richard D. Anaya
Commissioner, District 4

Joe S. Grifé, Jr.
Commissioner, District 5

David Wolf
County Manager



SFC CLERK RECORDING 08/17/2004

Mr. John Paul Garcia
P.O. Box 16452
Santa Fe, N.M. 87506

May 18, 1999

2088635

Dear Sir;

I am writing to advise you that the Land Use Department is denying your request for five 2.5 acre lots in the North Fork area. It is the opinion of both the County Hydrologist and the State Engineer that your site specific well and associated data cannot support the creation of five new lots. Should a new, more favorable well be drilled on the existing lot you are welcome to make a new submittal for subdividing the property subject to new water availability findings and the provisions of our code.

You can however amend your application now to create two equal lots if the second lot is conditioned to require a new State Engineer well permit and drillers log to be submitted with any application for a County land use permit. Each lot will be restricted to one dwelling and 0.25 acre feet water use per year. Mr. Roman Abeyta, Development Review Specialist II will be handling your case.

Enclosed is a package of memos and transmittals we have collected regarding your current application. If letters and memos not included were exchanged with County officials, please provide copies to complete the record. This information will become part of the application. Be advised that several neighbors protested your application.

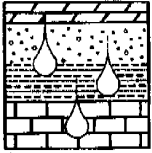
You have a right to appeal this decision. An appeal should be filed within 5 working days of receipt of this letter. To file an appeal you must complete a development permit application, provide a letter stating why you are appealing the decision and pay a \$75 application fee. You must then take care of legal noticing and be present at the public hearing before the County Development Review committee (CDRC).

If you have any questions please contact Roman Abeyta at 986-6225.

Sincerely,

Diana Lucero,
Acting Land Use Administrator

cc. Jack Frost, County Hydrologist
Roman Abeyta, Development Review Specialist II



Clay Kilmer
Ground Water Professional



SFC CLERK RECORDING 08/17/2004

February 2, 2002

Santa Fe Board of County Commissioners
P.O. Box 276
Santa Fe, New Mexico 87502

2088636

RE: Transmittal of documents related to application for JP Garcia Land Use Proposal

Dear Sirs:

Transmitted herewith are several documents related to the Garcia application for land division in Santa Fe County, New Mexico. Transmitted materials are summarized as follows:

- Figures 1-6** Copies of newly-prepared materials responding to 2000 and 2001 correspondence and comments
- Appendix A** 1998-2002 correspondence and comments from Santa Fe County Hydrologists (Frost and Yuhas) and State Engineer Hydrology Staff (Morrison) regarding the Garcia application
- Appendix B** April 27, 1999 CKAL submittal responding to 1998 and 1999 comments from Santa Fe County Hydrologist (Frost) and State Engineer Hydrology Staff (Morrison) regarding the application
- Appendix C** Data and plots of well testing requested by Santa Fe County Hydrologist (Yuhas)

This transmittal is intended to provide a brief history of the John Paul Garcia application and a summary of salient arguments regarding water availability on his property. A number of submittals, correspondence and memoranda were created in association with the application; copies are included with this submittal in Appendix A.

Historical Synopsis

Clay Kilmer & Associates, Ltd. (CKAL) was retained in 1998 to provide a Geohydrologic Report and Water Availability Assessment for the Garcia proposed land division in Santa Fe County, New Mexico. A demonstration well was drilled on the property in January 1998; hydrogeological data obtained from the well indicated that a sufficient thickness of saturated Tesuque Aquifer was present on the tract to justify minimum 2.5-acre lots according to a Water

Availability calculation set forth in the Hydrology Appendix to the Santa Fe County Land Ordinance. In order to verify that the demonstration well could yield adequate water for a rural residence, the well was subjected to sustained-yield testing.

The following testing has been performed on the well:

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Pumping Interval/Days	Gallons pumped/ Days supply for 1 Dwelling	Recovery Period
3/12/98 – 3/17/98, 5.0 days	18,000 gallons 72 day supply	<24 hours
9/11/98 – 9/15/98 5.7 days	26,986 gallons 108 days	<24 hours
9/18/98 – 9/25/98 6.7 days	30,136 gallons 120 days	<24 hrs <3" @ 300 min
11/1/00 – 11/6/00 5.0 days	14,400 gallons 58 days	30 hrs

The test data for the earliest test was integrated into a Geohydrologic Report and submitted as part of the original application package to Santa Fe County. The Santa Fe County Hydrologist, Mr. Jack Frost, refused to validate the initial test results, expressing reservations about the data obtained from the test. During the pumping phase of the test, partial water level recovery occurred, due to development of the well. Mr. Frost also expressed concern with the validity of the testing because Mr. Garcia collected some of the data. This conclusion was reached over a period of several months and another test was scheduled to begin on September 11, 1998; Mr. Frost was advised, verbally and in writing of the test scheduling so that County Staff could visit the site to verify pumping rate and water level response during the test. No Santa Fe County representative visited the site during testing. The data from the second test was transmitted to Mr. Frost, who again refused to accept the validity of the test data.

The third test was performed on the well beginning on September 18, 1998. Mr. Frost was notified in advance of the test to allow County representative(s) to visit the test location to verify testing results. The third test data was transmitted to Mr. Frost. He transmitted a memo (11-17-98), to Mr. Rudy Garcia and Ms Diana Lucero, SFC Land Use Administrators, recommending denial of the Garcia application. A copy of this memo is included in Appendix A of this submittal.

Mr. Frost's 11/17/98 memo contained a recommendation that the State Engineer Office (SEO) review the Geohydrologic Report for the subdivision. Mr. Tom Morrison of the SEO Hydrology Staff reviewed the document and prepared a memo dated 12/10/98 recommending denial of the application. This memo is included in Appendix A.

I reviewed the Frost 11/17/98 memo and the Morrison 12/10/98 memo and attempted to isolate specific arguments pertaining to water supply criteria identified in the Hydrology Appendix of the Code and prepared responses to each. Rebuttal comments that I prepared were transmitted to

Mr. Garcia on April 27, 1999 (included with this submittal in Appendix B). In general, Mr. Frost's rationale for denial centered on the modest yield of the well (2-3 gpm), while Mr. Morrison's analysis relied on an assumption that no water is available from storage in most of the saturated section of the Tesuque Aquifer at the Garcia property.

Mr. Garcia advised Santa Fe County that he wished to challenge the recommendation of the Santa Fe County Planning Staff and obtained a docket in a scheduled meeting of the Santa Fe County Commission on approximately April 27, 1999. Mr. Garcia and I attended the meeting, but were unable to present information related to his challenge.

Mr. Frost was replaced as the Santa Fe County Hydrologist by Ms. Katherine Yuhas sometime prior to October 2000. Ms. Yuhas reviewed the Garcia application file and determined that the earlier assessments by Messrs Frost and Morrison should be revisited. She agreed to consider additional data to be produced by another well test in correspondence dated 10/19/00 (Appendix A). The test was executed according to protocol set forth by Ms. Yuhas. The well was pumped for 5 days starting 11/6/00; Ms. Yuhas visited the site twice during critical portions of the drawdown and recovery phases of the test and approved the validity of the test data. Copies of the test data are included with this submittal in Appendix C.

Ms. Yuhas reevaluated the application, and submitted a memorandum to Mr. Wayne Dalton, Santa Fe County Development Review Specialist dated 1/2/02, recommending approval of Mr. Garcia's application. Ms. Yuhas's memo contained a calculation of water available from groundwater storage under the Garcia property that, while employing very conservative values for Specific Yield, was more reflective of published specific yield values for the area than those employed by Mr. Morrison. The Santa Fe County Land Use Administration Staff has approved the 5-lot subdivision by Mr. Garcia.

Mr. Garcia's application was again placed on the agenda for a Santa Fe County Commission meeting (I am unsure of the date of this meeting). During the presentation of Mr. Garcia's application, it became known that Ms. Yuhas's assessment conflicted with that offered by the SEO in Mr. Morrison's 12/10/98 memo. As directed by the County Commission, Ms. Yuhas met with Mr. Morrison (unknown date) and asked him to review the file, including the CKAL 4/27/99 memo and the new well test data. Mr. Morrison responded to Ms. Yuhas's request with a memo dated 12/17/01. In his memo, Mr. Morrison used a different approach than he used in his earlier 12/10/98 memo, however his conclusions were the same, recommending denial of the Garcia application. Curiously, Mr. Morrison's 12/17/01 memo was created prior to Ms. Yuhas's 1/2/02 memo recommending approval of Mr. Garcia's application. Mr. Morrison's 12/17/01 memo was sent by registered mail and bears an exhibit number similar to those affixed to exhibits that are entered into records for legal proceedings.

The remainder of this submittal presents the hydrologic issues that are now held in contention between myself and Mr. Morrison and Mr. Frost.

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Disputed Issues

The items discussed in the 12/17/01 Morrison memo are categorized in three areas; aquifer Specific Yield (SY), saturated thickness and well yield.

Specific Yield – Saturated Thickness

Mr. Morrison continues to assert that major portions of the saturated Tesuque aquifer section penetrated by Mr. Garcia's well do not contain available water, that is, that the Specific Yield of these portions of the saturated section is 0%. Prior to entering a discussion of the disputed Specific Yield parameter, a definition would be useful. Specific Yield is defined and depicted in Figure 1 attached to this submittal. Specific Yield is the percentage (by volume) of rock below the water table that is saturated by water that can be drained from the rock by gravity. Figure 1 indicates that if you drain 1 ft³ of saturated rock and obtain 1/10 ft³ of water, then the Specific Yield is 10%. Saturated thickness is the vertical thickness of water saturation that exists in a water-bearing zone, such as the Tesuque Aquifer.

Mr. Morrison maintains that roughly 75% of the saturated Tesuque Aquifer section that is penetrated by Mr. Garcia's well contains fine-grained unconsolidated sediments (silt and sandy silt) that yield water relatively slowly and therefore should be neglected and assigned a Specific Yield value of 0%. Mr. Morrison's position directly conflicts with authoritative works on the Tesuque Aquifer System prepared by the United States Geological Survey for the Santa Fe area, including that portion of the Tesuque Aquifer System underlying Mr. Garcia's property (Mathematical Model of the Tesuque Aquifer System, USGS OFR 80-1023). Figures 2 and 3 (attached to this submittal) contain copies of the title page and pertinent pages of the USGS publication regarding Specific Yield of the Tesuque Aquifer. This work clearly characterizes the Tesuque Aquifer as an "interbedded group of sands, silts and clays" and sets forth an average Specific Yield value of 15% and maximum plausible range of between 10% and 20% for the Tesuque Aquifer. It is highly worth noting that the Santa Fe County Code Hydrology Appendix lists a Standard Value of 15% for the area of Mr. Garcia's property (Basin Fringe Zone). It should also be noted that the CKAL Geohydrologic Report contained a water availability calculation that utilized a Specific Yield value of only 7.5%.

Information obtained from the Garcia well, and from other wells in the immediate vicinity of the Garcia property also conflicts with Mr. Morrison's analysis. A hydrogeologic cross section was presented in the CKAL Geohydrologic Report; the line of section is represented in Figure 4 (attached). The cross section has been annotated in Figure 5 (attached) to depict Mr. Morrison's position. This diagram shows that Morrison's calculation of water in storage at the Garcia property includes only 30 feet of saturated section, neglecting the upper 175 feet of saturated section penetrated by the Garcia well (RG-68984). This analysis asserts that the upper 175 feet of the Tesuque Aquifer at the Garcia tract contains no recoverable water. It is worth noting that the cross section depicted only selected nearby wells that fully penetrated the Tesuque Aquifer and struck Espinazo Volcanics below; several other shallower wells are present in the immediate vicinity of the Garcia Tract. One of the closest wells to the Garcia tract (RG-50757) has been added to the cross section in Figure 6 to demonstrate the fatal flaw in Morrison's position. This well penetrated only to a depth of 120 feet and found a yield of 10 gpm, according to the driller's

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log. There are numerous other examples of shallow well production throughout the shallow saturated section in the vicinity of the Garcia property. By Morrison's reasoning, all wells in the area shallower than 260 feet should be dry holes.

Mr. Morrison points to the modest yield of the Garcia demonstration well (2-3 gpm) in an attempt to justify these unprecedented assumptions about Specific Yield of unconsolidated sediments. Well productivity is related to several factors, only one of which is aquifer Specific Yield. Mr. Morrison offers no numerical analysis using the available known factors such as well screened length, aquifer test transmissivity or well specific capacity to demonstrate that modest well production in the well is attributable to Specific Yield values of 0%.

Well Yield

Mr. Morrison asserts that the latest test of the Garcia well (performed on 11/1/00) demonstrates that the well has reduced production capacity from earlier tests (down from 3 gpm to 2 gpm). He attributes the reduced well capacity to declining water levels in the area, offering no specific water level data or any numerical analysis to quantitatively link lower well capacity to reduced saturated thickness. We concur that the capacity of the Garcia well was lower during the 11/1/00 test than in earlier tests; however we do not attribute the reduced capacity to regional water level decline. The well was not used for over two years between the third well test (9/18/98) and the latest test; reduced capacity due to well screen mineral encrustation and entry of fill into the well screen during periods of non-use is a common occurrence. The water level of the well was sounded on 2/1/02; the depth to water was measured at 195.25 feet below casing top, or 2.5 feet lower than it was when the well was drilled four years ago. This represents only a 0.8% reduction in saturated thickness. This is well within the range of observed water level changes attributable to climatic variation over the period of record for available observation wells in the area.

Conclusions

Mr. Frost's memos communicate a general fear for sustainability of water resources in the area and he offers numerous anecdotal statements about problem wells and concerned citizens; however no specific location data for the wells or other problems demonstrating limited water availability at Mr. Garcia's property are provided. Mr. Frost's memos contain no references to Santa Fe County Land Use Code requirements or specific reasons why water availability documentation submitted by Mr. Garcia does not satisfy Code requirements.

Mr. Morrison's memoranda contain analyses that focus on water availability criteria found in the Hydrology Appendix of the Code; however he employs unprecedented assumptions about water-bearing properties of the Tesuque Aquifer that are at odds with the most credible published resources available on the Tesuque Aquifer, with Standard Values in the Hydrology Appendix of the Code and with geohydrologic data from wells drilled on the Garcia property and in the immediate vicinity.

I hope that this submittal is adequate to meet your needs in evaluating the history and merits of Mr. Garcia's pending application. If you have any questions, do not hesitate to contact me. Thank you for your effort in this matter.

Sincerely,



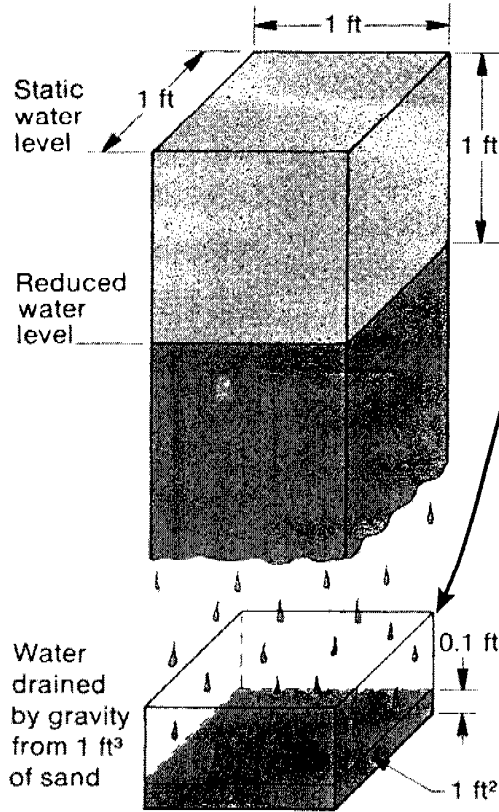
L. Clay Kilmer
Sr. Hydrogeologist, CGWP

cc: John Paul Garcia
Katherine Yuhas
Wayne Dalton

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What is Specific Yield?

the amount of water that will drain from the saturated rock



1 ft³ of rock is drained

1/10 ft³ of water comes out
SY = 10%

Specific Yield of Tesuque Aquifer

Standard Value "Code" = 15%
USGS Value = 15%

Value in CKAL Geo Report = 7.5%

Figure 1.--Definition of Specific Yield.

2088643

U. S. GEOLOGICAL SURVEY
OPEN-FILE REPORT 80-1023

MATHEMATICAL MODEL of the
TESUQUE AQUIFER SYSTEM
Underlying Pojoaque River Basin
and Vicinity, New Mexico



PREPARED IN COOPERATION WITH THE
U. S. BUREAU OF INDIAN AFFAIRS

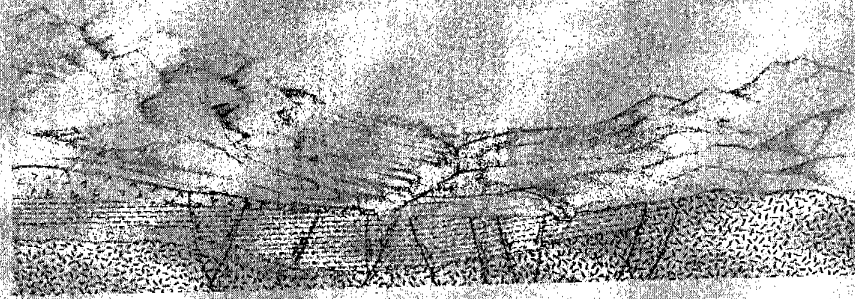


Figure 2.--USGS Groundwater model report with
assessment of Specific Yield for the
Tesuque Aquifer, including the JP
Garcia Property

From: USGS Hearne Report 80-1023, page 17, 19

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Specific yield

For unconfined conditions, the change of the volume of water in storage per unit area as the result of a unit change in hydraulic head is produced primarily by the draining or filling of pore space. This change is dependent upon pore size, rate of change of the water surface, and time. Only an approximate measure of the relationship between hydraulic head and storage is obtainable for unconfined conditions. This measure is the specific yield. No aquifer tests of the Tesuque aquifer system have been long enough to determine the specific yield. An estimate of the specific yield may be obtained from a knowledge of the materials comprising the formation. The materials are poorly sorted and generally contain considerable clay and silt. For these materials the fine-grain fraction will tend to determine the storage coefficient. Johnson (1967) has compiled storage coefficient values determined by various investigators. Johnson (1967, p. D-1) lists 12 values of storage coefficients for sandy clay and 16 for silt. The values range from 0.03 to 0.19. Johnson lists 17 values for the specific yields of fine sands. The values range from 0.10 to 0.28. Johnson lists 17 values for medium sand. The values range from 0.15 to 0.32. Being an interbedded group of sands, silts, and clays, the average specific yield of the Tesuque aquifer system is expected to be somewhere in the range from about 0.10 to 0.20.

Table 1. Most likely value and plausible range of aquifer characteristics

Aquifer characteristic	Lower limit of plausible range	Most likely average value	Upper limit of plausible range
Hydraulic conductivity parallel to the beds (feet per day)	0.5	1.0	2.0
Anisotropy ratio	0.001	0.003	0.01
Specific storage (per foot)	1×10^{-6}	2×10^{-6}	1×10^{-5}
Specific yield	0.10	0.15	0.20

Figure 3.--Report portions identifying Specific Yield for the Tesuque Aquifer System

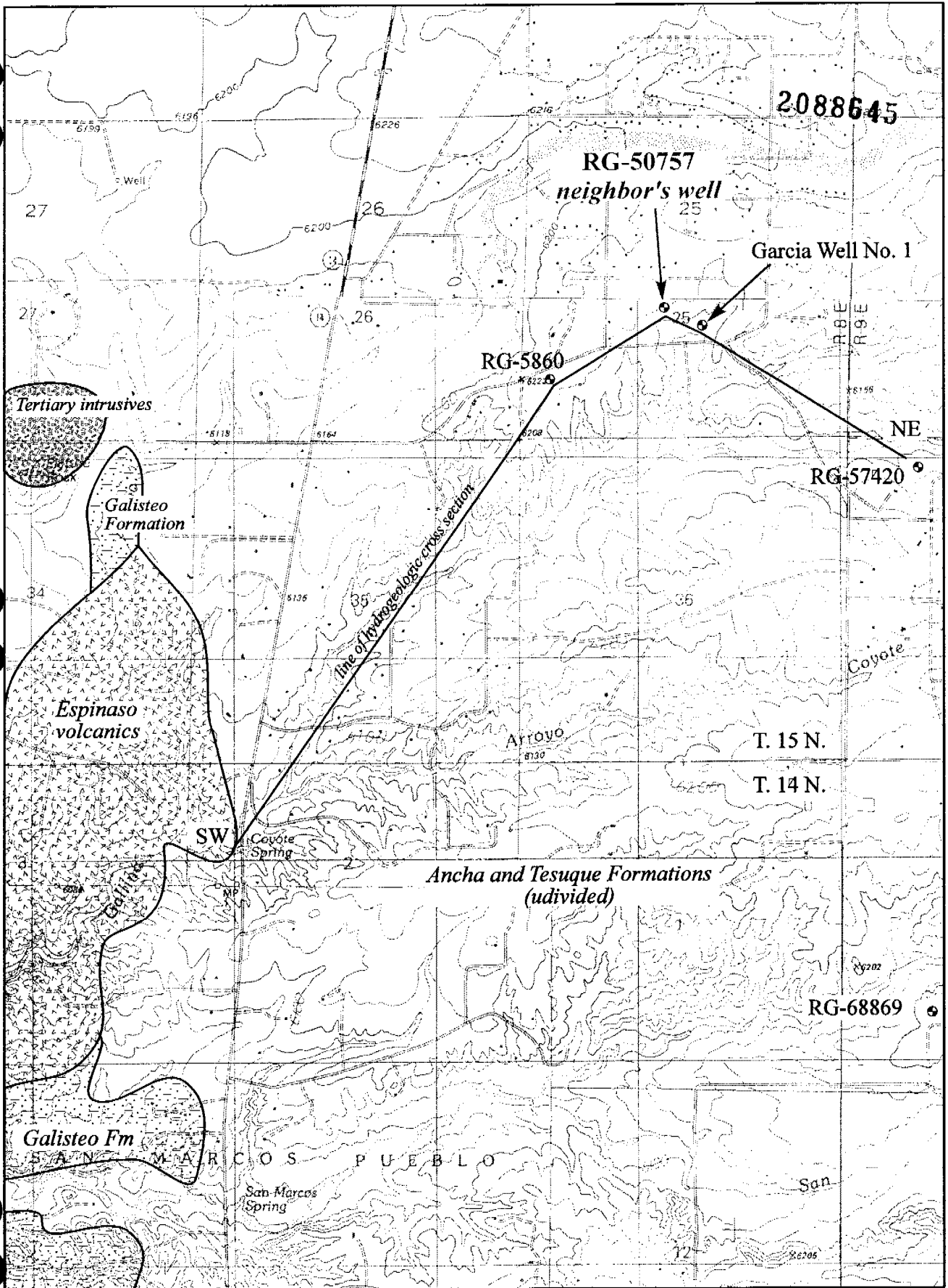


Figure 4.--Surficial geology in the area of the JP Garcia property (modified from Kelley, 1978).

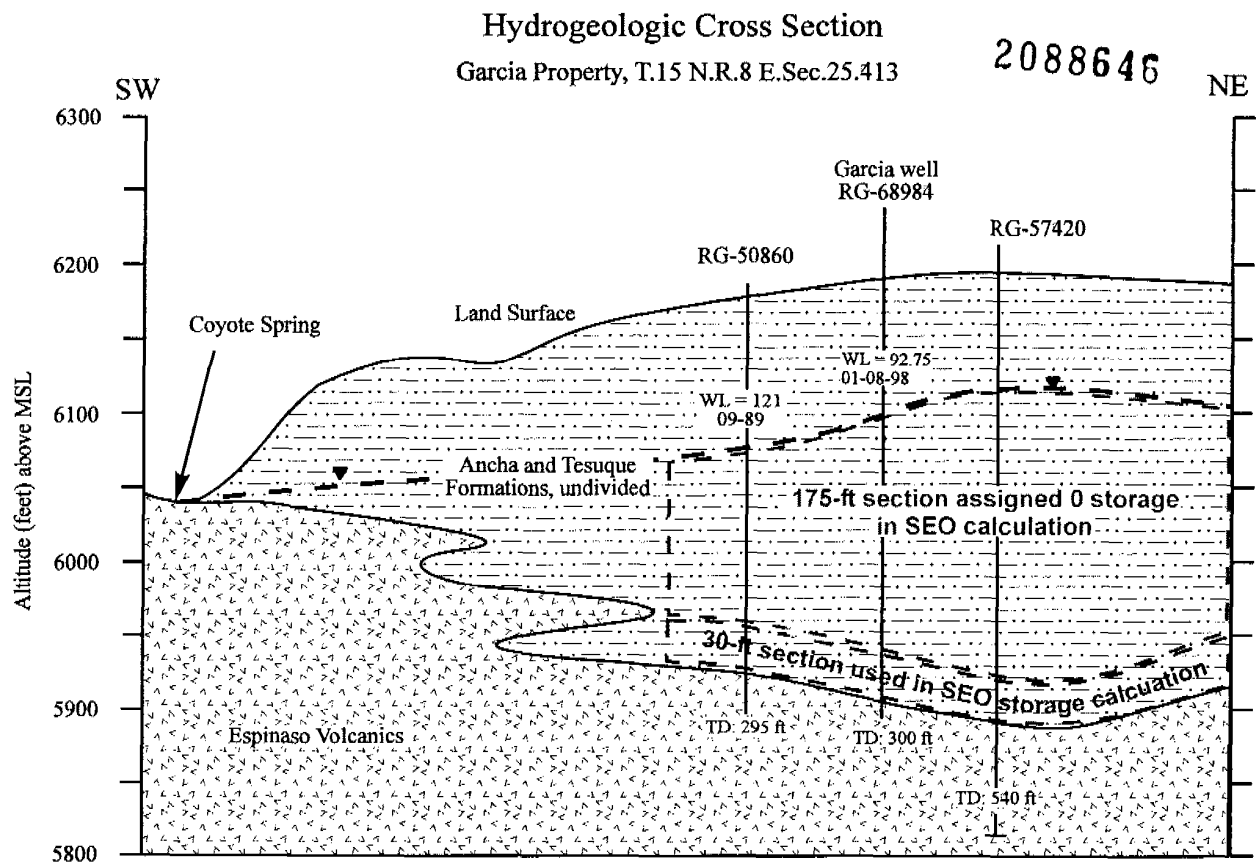


Figure 5.--Cross section showing saturated thickness used in SEO Dec. 2001 water in storage calculation.

Hydrogeologic Cross Section
Garcia Property, T.15 N.R.8 E.Sec.25.413

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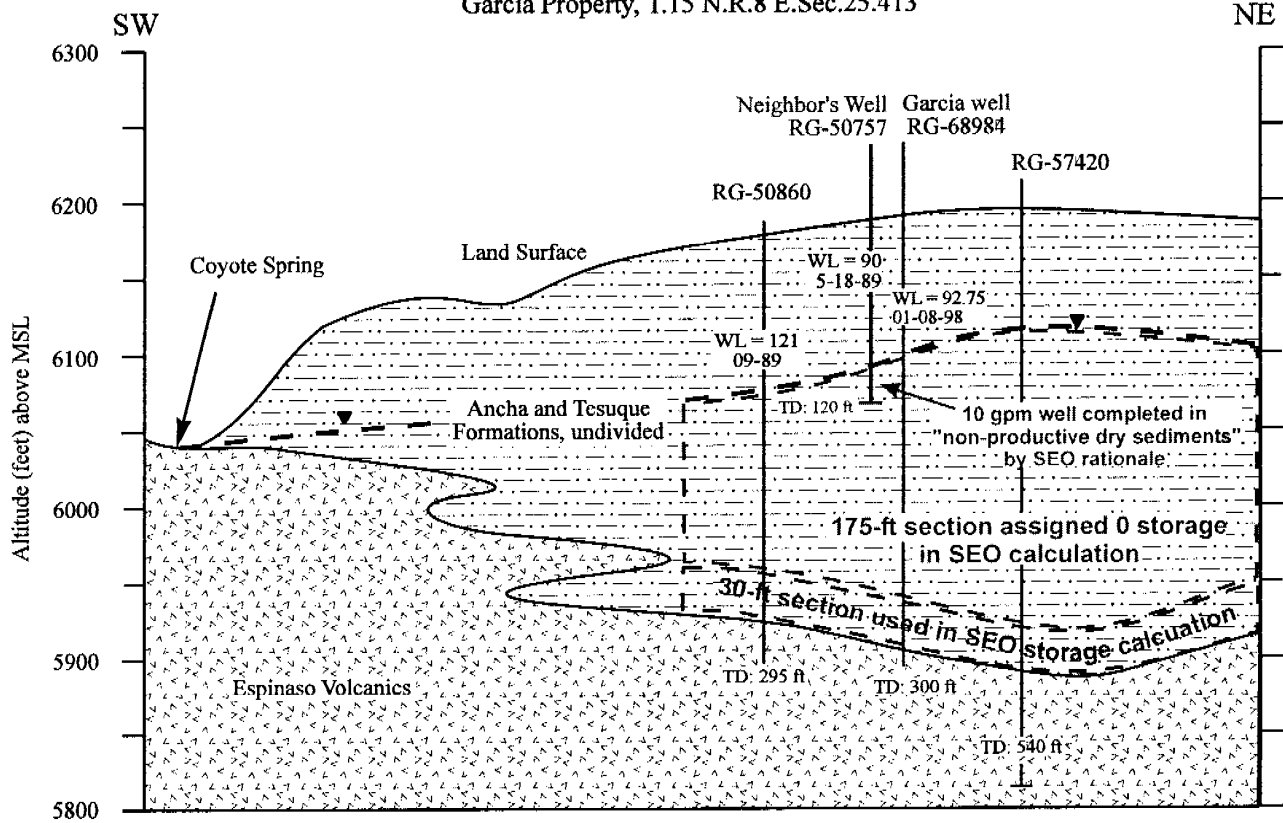


Figure 6.--Cross section showing shallow well on adjacent property.

Appendix
A

2088648

DATE: 11-17-98
TO: Rudy Garcia, Land Use Administrator
Diana Lucero, Deputy Land Use Administrator
Al Quintana, Building/Hydrology Division Director
FROM: Jack P. Frost, County Hydrologist
SUBJECT: John Paul Garcia Land Use Proposal

This memo is in response to a letter from John Paul Garcia to Rudy Garcia dated 11/17/98, and a meeting held at the County November 13 which I was unable to attend.

Background

The study area lies in the Lone Butte area, in the Basin Fringe hydrologic zone as designated in the 1981 General Plan. Several subdivisions were created in this area before the County had a code and zoning, which explains the existence of small lots that might not be approved today. Over one hundred domestic wells are of record within one square mile. This area is well known for poor wells and reports of wells going dry. The presence of large gravity tanks by many homes throughout the area attest to low deliverability wells. The regional hydrogeology is more typical of the Homestead zone where minimum lot sizes are even larger.

There is evidence of water levels declining in the few wells monitored in the area. Significant groundwater pumping occurs to the east at Sunlit Hills and Eldorado which intercepts ground water recharge from the mountains through this area, and down the ground water flow path lies the village of Cerrillos water supply. The area was long ago identified by the Metropolitan Water Board as someday needing community water, but few residents can afford it. Nearby, in the past week Thompson Drilling had to replace a new well gone dry. My concern about the water resource in this area is legitimate.

Many citizens and professionals alike are concerned with the piecemeal approach to hydrologic investigations that code prescribed site specific studies take. This area is part of a larger investigation that includes the entire greater San Marcos watershed, which attempts to integrate local studies, collect new data, and ultimately determine the greater groundwater availability, considering all present and potential future appropriators. Without this assessment this area has the potential to over exploit the resource and require imported water, just like Eldorado.

Project History

Mr. Garcia requests 5 -2.5 acre lots based on this one well test. The well appears to be poorly constructed, and remedial work has not significantly improved its production. The well test results are marginal in my opinion, poor even by local standards. The owner proposes to share the well between five lots, yet by comparison to

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a table created by the Bureau of Reclamation (attached) the test results are poor for a single family domestic well. No lots this small have been created locally based on hydrology for several years.

An inadequate review report was submitted by Charles Heaton many months ago, and I wrote the attached memo in response to a letter from Mr. Heaton to Mr. Garcia which was included in the report. Mr. Garcia protested my findings then to Charlie Gonzales, we discussed it, and Charlie backed me up.

Mr. Clay Kilmer, a hydrologist from Albuquerque subsequently became involved. Mr. Kilmer supervised the drilling of a new well which was only marginally successful. The fact is, the pumping tests are unusual, and the well deliverability is low. The Code requires that the water availability be determined in a site specific well or wells. I expressed specific concerns in response to the Kilmer report then and have discussed this situation numerous times over the phone with Mr. Garcia and Mr. Kilmer. I suggested early that larger lots might be possible, and that an additional well which encountered favorable conditions on the other side of the property might help prove the smaller lots Mr. Garcia desires. I am sure Mr. Kilmer, Mr. Garcia and I have discussed this at least six times this year, and absent the information on later testing I never felt the submittal was complete.

Meanwhile the County has received several calls of concern from neighbors who wish to protest this creation of small lots and are worried about water. Other lands exist in the area which could be subdivided, further increasing the demands on the aquifer. One citizen came in to review the file. Another called to report that during a well test the water was being returned to the well, an improper procedure. I expressed concern to both Garcia and Kilmer about well tests not conducted or supervised by a professional. The first water quality analysis failed the bacteria test. Subsequent to the Kilmer report that I found inadequate for the 5 -2.5 acre lots, I recall Mr. Kilmer faxing me the uninterpreted results of a test conducted by Mr. Garcia, which I requested be interpreted and included in a revised report. Only today did I receive Mr. Kilmer's addendum by fax. His addendum stated further testing was planned. Based on these circumstances I did nothing further. I cannot prescribe what can be done to create the five lots, I can only review the findings of the studies conducted and recommend on the viability of the proposal. It should be noted that over this same period I have processed a number of well prepared, complete submittals on other projects.

Conclusion

Mr. Garcia's consultant and I disagree, and I possess more local experience. Based on the existing well I cannot in good conscious recommend this land division. I don't believe this well has demonstrated adequate long term water availability for the lots requested, nor can I condone this poor well being sold to unknowing buyers. I recommend this report be sent for review to the Hydrology Bureau of the Office of the State Engineer.

2088650

MEMORANDUM

DATE: March 18, 1999
 TO: Diana Lucero, Acting Land Use Administrator
 FROM: Jack Frost County Hydrologist
 VIA: Al Quintana, Building/Hydrology Division Director
 FILE REF.: John Paul Garcia Subdivision Application

I reviewed Mr. J. Garcia's March 18 1999 fax chronology of events regarding his land division and disagree with many statements. The chronology is full of misrepresentations about me and what I've said, and I believe the record will support me. Copies of a number of memos by me, the State Engineer, Mr. Garcia, Charles Heaton and protestants are attached. There may be other letters from Mr. Garcia to Rudy and others I have never seen.

The real issue is that Mr. Garcia has a poor well and has not satisfied the State Engineer's hydrologist's or my reviews. We don't believe the hydrology documentation is adequate to create 5, 2.5 acre lots. In dealing with this project Mr. J. Garcia has seldom dealt with me directly. Mr. Garcia attributes statements to me about Charles Heaton and driller Wes Caldwell I don't believe I ever made. In fact, I am always very careful about reflecting on the people involved. I don't recall ever speaking to Charles Heaton in the early part of this process. Heaton did council Mr. Garcia to "obtain support from your County Commissioner and attempt to bypass the Land Use office and the County Hydrologist". I gather that Mr. Garcia has gone to my supervisors and a commissioner repeatedly. He has had numerous conversations with Emilio Gonzales, Rudy Garcia, and Charlie Gonzales where I was not present. Charlie Gonzales backed me up. Emilio and I have discussed this several times.

On 11/24/98 I attended a meeting with Mr. Garcia, Charles Heaton, and Rudy where we discussed sending the Clay Kilmer's report to the State Engineer for review. Creating three lots was discussed then. I have stated repeatedly I could only consider three equal lots. I did not promise this. I disagreed with creating two 2 1/2's and a five at that time because I believed this was a work-around and the five acre lot would be split subsequently. I don't sign off on plats, only make recommendations. I have no idea what Rudy told Mr. Garcia. It was Mr. Heaton who suggested we would abide with the State Engineers review and Mr. Garcia stated so in a letter, now he doesn't like the outcome (copy attached).

Unfortunately, neither I nor the Chief of the State Engineer's Hydrology Bureau believe Mr. Garcia has proven an adequate source of supply for his proposed subdivision. He drilled and obtained a poor well, it is marginal by objective standards. Our discussions about drilling another well was an attempt to help him find sufficient water for his project. He could succeed, or drill another poor well, or one which differs significantly

from others in the area and reinforces my legitimate concern about water availability there.

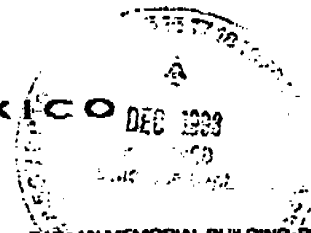
Several neighbors have called repeatedly to protest this project, and to report apparent irregularities in the pump test. (Part of the issue of submittal "completeness" relates to the fact that Mr. Garcia conducted much of the work himself without a professional). One local came in and reviewed the file and pointed out issues in the Heaton report in a letter (attached). Another local consultant, Charles Hagerman, looked into this issue at an early stage.

Again, I recommend denial of the application to create five 2.5 acre lots in this area. The well drilled and reported on is inadequate for this application. The State Engineer and I are in substantial agreement. I have taken great care in my discussions and review of this project. My water concerns about this area are legitimate. I reject the accusation I have been arbitrary or unfair. My record of memos is clear and consistent.

2088652



STATE OF NEW MEXICO
STATE ENGINEER OFFICE
SANTA FE



December 10, 1998

THOMAS C. TURNEY
State Engineer

BATAAN MEMORIAL BUILDING, ROOM 101
POST OFFICE BOX 88102
SANTA FE, NEW MEXICO 87504-5102
(505) 827-8175
FAX: (505) 827-6188

Jack P. Frost
County Hydrologist
Santa Fe County
P.O. Box 276
Santa Fe, NM 87504-0276

Reference: John Paul Garcia Hydrology Report Submittal

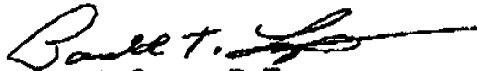
Dear Mr Frost:

The State Engineer Office has reviewed the geohydrologic report and water availability assessment prepared for the John Paul Garcia property and Well RG-68984, dated March 1998. It is the opinion of this office that the referenced report is not reasonable and does not conform with suggested well yields for household wells. The report was reviewed pursuant to the Santa Fe County Land Development Code.

A memorandum by Tom Morrison, Hydrology Bureau Chief, which presents specific comments on the referenced report is attached for your information.

Please do not hesitate to call if additional information is necessary.

Sincerely,


Donald T. Lopez, P. E.
Assistant State Engineer

DTL:TM

MEMORANDUMSTATE ENGINEER OFFICE
SANTA FE, NEW MEXICO

December 4, 1998

TO: Donald T. Lopez, Chief, Technical Division

FROM: Tom Morrison, Chief, Hydrology Bureau

SUBJECT: Review of John Garcia Hydrology Report submitted by Santa Fe County

As per your request, the Hydrology Bureau has reviewed the subject report and other materials submitted by Santa Fe County. The property contains 12.5 acres and is located in T. 15 N., R. 8 E., Sec. 25 (about 4 1/2 miles south of the State Penitentiary). A minimum lot size of 50 acres is required for the Basin Fringe Zone by the Santa Fe Land Development Code (Code) based on standard water use and availability values. However, the Code allows revision of the standard values if the County Hydrologist finds that new values have been reasonably justified. The developer's report attempts to revise the standard values to allow a minimum lot size of 2.5 acres. In my opinion, the developer's values are not reasonable to justify a 2.5 acre minimum lot size.

Regardless of the Code requirements, the developer's proposal does not conform with suggested well yields for household wells. The developer is proposing that one well yielding only 3 gpm serve as the sole source of supply for five lots. This yield is less than the recommended yield for one household. Our publication entitled "The Rural Homeowner's Guide" indicates a supply of at least 5 gpm per home is preferred.

The following specific comments are offered:

1. Article III, Section 10.1.2 of the Code requires that the minimum lot size be calculated based on ground water in storage only and that lots be large enough to have ground water in storage to provide a 100-year supply. The developer's consultant calculates water in storage on page 4 of the report. An aquifer thickness of 166.8 feet is used in the calculation and is obtained by taking the difference between the static water level in the well and the top of the well screen. Since the log indicates that water was first encountered at 230 feet and that water rose to about 93 feet below land surface, it is uncertain whether saturated conditions exist above 230 feet.

A problem with minimum lot size calculations is that the Code provides no guidance on how saturated thickness is to be computed. Several approaches are available resulting in a wide range of results. The developer has taken an optimistic approach by

assuming full saturation below the potentiometric surface and that each of the various geologic zones will readily yield water to the well. Indeed, it may be possible that the well driller only identified the most productive zone without noting other saturated intervals. Included in the submittals was a letter from the developer's consultant, Mr. Kilmer, to Santa Fe County which appears to have been prepared to address this issue. Apparently 50 feet of additional perforations were cut in the upper casing to demonstrate a longer saturated thickness. The pumping test following the construction of the additional perforations indicates that yields only averaged 3.25 gpm due to 50 additional feet of perforations. While this information may support some additional saturated zones, it may be incorrect to assume that the entire 50 feet was saturated with productive materials. Since low-productive zones will not contribute significantly to available supply, water in storage in these units should probably not be included in the storage estimate.

Several options are available on how the productive saturated interval should be computed. These include: a) using the 30 foot saturated interval specified in the log as the total saturated thickness; b) summing the original 40 foot and additional 50 foot perforated intervals to obtain the saturated thickness; or c) select potential productive water bearing units composed of sand or gravel and sum these thicknesses up to obtain the saturated thickness. Procedure a) may not acknowledge other saturated units which were missed by the driller. Some well logs in the area have encountered saturated zones near the potentiometric surface although the subject well did not identify any of these zones. Procedure b) may be mis-leading if the screen interval is located opposite low producing zones. Procedure c) may represent the best neutral estimate of saturated thickness which may be available for well extraction. However, some subjective decisions will need to be made on how we select the most productive zones.

For this study, units containing predominately sands or gravels will be selected as productive zones. Sandy-silty and silty-sandy zones are excluded to provide a conservative analysis. These precautions are recommended due to the poor aquifer conditions in this area. In reviewing the log, about 61 feet of the productive sediments are present below the water level. These units are at the following depths; 96, 215, 230, and 285 feet below land surface. The developer's calculations can be performed using a saturated thickness of 61 feet rather than 166.8 feet as follows:

$$A \text{ (water availability)} = 12.5 \text{ acres} \times 61 \text{ ft.} \times 0.075 \text{ (S)} \times 0.8 \text{ (RP)}$$

$$= 45.75 \text{ acre-feet}$$

U = water use per lot for 100 yrs (assume developer's estimate of 0.25 AFY per parcel for this calculation for demonstration purposes only)

Minimum Lot Size = $U \times \text{acres}/A = 0.25 \times 100 (12.5)/45.75 = 6.83 \text{ ac.}$

Since the development is 12.5 acres in size, these calculations show that water may only be available for one parcel ($12.5/6.83 = 1.83$ parcels).

2. Article III, Section 10.2.2 of the Code indicates a standard value of U of 1 acre-foot should be used but this value may be adjusted if an applicant proposes to utilize water conservation measures. No documentation of water conservation measures were provided to demonstrate the value of 0.25 acre-feet used in the report. Using a U value of 1 in the above calculations results in a minimum lot size of about 27 acres.

Marcos P. Trujillo
Commissioner, District 1

Paul Duran
Commissioner, District 2

Javier M. Gonzales
Commissioner, District 3



Richard D. Anaya
Commissioner, District 4

Joe S. Grñe, Jr.
Commissioner, District 5

Samuel O. Montoya
County Manager

SFC CLERK RECORDING 08/17/2004

October 19, 2000

2088656

Mr. John Paul Garcia,
P.O. Box 16452
Santa Fe, NM 87506

RE: Pumping test for Well RG-68984

Dear Mr. Garcia:

The letter is in response to your request for your lot split application to be reconsidered. I believe the request you have made is to divide a 12.5 acre lot into five 2.5 acre lots and to share wells between some of the lots. Perhaps two lots on one well and three on the other.

As we have discussed on the phone, I would like to see a final pumping test on your well in order to make a determination of the available water supply for your property. I propose that the test be conducted for 48 hours with a five-day recovery period. However, before this test is conducted, I would like to meet with you and your consultant to discuss test design and ensure that all of the County's concerns will be addressed. I will be available to observe portions of the pumping test, and at a minimum, I would prefer to be present for start-up and the beginning of the recovery period.

Please call me at 986-6212 to schedule a meeting.

Sincerely,

Katherine Yuhas
Santa Fe County Hydrologist

Cc: Clay Kilmer and Associates, Ltd., 3312 June Street NE, Albuquerque, NM 87111

2088657

SFC CLERK RECORDING 08/17/2004

Marcos P. Trujillo
Commissioner, District 1

Paul Duran
Commissioner, District 2

Javier M. Gonzales
Commissioner, District 3



Paul Campos
Commissioner, District 4

Jack Sullivan
Commissioner, District 5

Samuel O. Montoya
County Manager

MEMORANDUM

TO: Wayne Dalton, Development Review Specialist II

FROM: Katherine Yuhas, County Hydrologist *KY*

DATE: January 2, 2002

RE: John Paul Garcia Lot Split

I have reviewed the evaluation from the New Mexico State Engineer's Office (SEO) of the proposed lot split by John Paul Garcia.

The State Engineer's analysis and mine differ generally over one key element of the water availability equation, that of the saturated thickness of the aquifer in the area. The SEO based their calculation on a saturated thickness of only 30 feet, but my calculations used 166.8 feet. The State Engineer has based his conservative approach on his extensive knowledge of the aquifer in the area and the poor yield of the well.

In general, I agree with the State Engineer's analysis. I agree that a major portion of the water supply for Mr. Garcia's property is coming from the interval from 230 - 260 feet below ground surface that the driller identified as the water bearing zone. However, upon completion of the well, the depth to water in the well was 93.2 feet which is generally where the water table is in the area. It is my opinion, therefore, that there is water in the well from 93.2 feet to 230 feet but that the yield of the water is very low so that it was not identified by the driller. This is typical of many well logs.

I have put together the following two equations for determining water availability beneath the property:

- A) $12.5 * 136.8 * .075 * 1 * 0.8 = 102.6$ acre-feet
- B) $12.5 * 30 * .15 * 1 * 0.8 = 45$ acre-feet

Equation A represents the water availability I believe exists from 93.2 to 230 feet. The specific yield value used for those sediments is low (0.075). Equation B represents the water availability from 230 - 260 feet which was calculated by the State Engineer. The

2088658

SFC CLERK RECORDING 08/17/2004

specific yield used for this area of the aquifer is higher (0.15) which is consistent with the driller's log of the well. When added together the two equations give a water availability beneath the property of 147.6 acre-feet.

147.6 acre-feet / 100 years = 1.47 acre-feet per year of use is sustainable over the 100 year period. This calculation supports the division of the property into five lots.

RECOMMENDATION

Recommend approval of five lots with a water restriction of .25 acre-feet per year per lot.

2088659

TOTAL P.03

STATE OF NEW MEXICO
OFFICE OF THE STATE ENGINEER
SANTA FE

THOMAS C. TURNEY
State Engineer

BATAAN MEMORIAL BUILDING, ROOM 101
POST OFFICE BOX 25102
SANTA FE, NEW MEXICO 87504-5102
(505) 827-6175
FAX: (505) 827-6189

December 17, 2001

Katherine Yuhas
County Hydrologist
Santa Fe County Land Use Administration
P.O. Box 276
Santa Fe, NM 87504

**CERTIFIED MAIL
RETURN RECEIPT
REQUESTED**

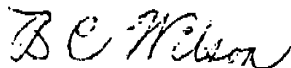
Reference: John Paul Garcia Subdivision

Dear Ms. Yuhas,

The Office of the State Engineer has reviewed additional information submitted for the referenced subdivision pursuant to the Santa Fe County Land Development Code and provisions of the New Mexico Subdivision Act. It is the opinion of this office that there is not sufficient water available to meet the full requirements of the proposed 2.5 acre-lots in the subdivision and therefore the subdivider's water supply proposal does not comply with the County's subdivision regulations.

A staff memorandum discussing the basis for our opinion is attached and should be provided to the subdivider.

Sincerely,



Brian C. Wilson, P.E.
Bureau Chief, Water Use and Conservation



MEMORANDUM

December 14, 2001

TO: Brian Wilson, Chief, Water Use and Conservation Bureau

FROM: Tom Morrison, Chief, Hydrology Bureau

SUBJECT: Evaluation John Garcia lot split, Santa Fe County

2088660

As requested, we have reviewed materials prepared by Clay Kilmer, consultant for the developer. The materials include an April 27, 1999 letter responding to my December 4, 1998 memorandum, a September 1999 report, and results from an aquifer test performed in November 2000. The property is located several miles south of the State Penitentiary in an area known to have low yielding wells. The basic minimum lot size is 40 acres but the developer is attempting to demonstrate a sufficient supply to support 2.5-acre lots on the 12.5-acre tract.

We have reviewed the submittals and find that our previous opinion remains unchanged: the developer's analyses are very optimistic and do not demonstrate a 100-year supply for 2.5-acre parcels. Allowing any division of land on the 12.5-acre tract will **not conform** to the Santa Fe County Land Development Code regulations for water availability.

Mr. Kilmer recommended a specific yield of 0.075 in his March 1998 and September 1999 reports and we used this value in our 1998 calculations. Nevertheless, he indicates in his April 1999 letter that we were incorrect in using his recommended value and argues that a specific yield of 0.15 be used. The low well production demonstrated at the Garcia well suggests that Mr. Kilmer's specific yield of 0.15 could be too high. However, since well yields are dependent upon several factors, some of which include the thickness of the water bearing zone and specific yield, Kilmer's assumed 202-foot saturated thickness could also be overstated. Wells completed in an aquifer system as described by Kilmer would be expected to yield more than the 3 gallons per minute (gpm) observed from the Garcia well.

The submittals also contained the results of an aquifer test performed on the Garcia well in November 2000. A comparison of these results to the September 1998 test suggests that the Garcia well has lost some capability to sustain previous production levels. A yield of 3.1 gpm could be sustained in 1998 for almost 7 days while 3 gpm could be sustained for only 6 hours in the November 2000 test. Production fell to 2 gpm for the remainder of the test. Well yields will decline further as water levels continue to decline in the future. Mr. Kilmer indicates on page 2 of his 1999 letter that water levels are declining in the area.

To ensure our previous findings are reasonable another analysis was performed. A specific yield of 0.15 is used but the actual proven thickness of the water bearing formation at the Garcia well is applied. The driller indicates that only one 30-foot thick

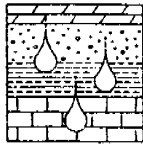
2088661

saturated zone was encountered by the Garcia well (see attached well record).
Calculations are performed using these values:

$$A = (AC \times SY \times ST \times RP) = 12.5 \text{ acres} \times 0.15 \times 30 \text{ feet} \times 0.80 = 45.0 \text{ acre-feet}$$

$$\text{Minimum lot size} = U \times \text{acres}/A = 0.25 \text{ afy/parcel} \times 100 \text{ yrs} \times 12.5/45.0 = 6.94 \text{ acres.}$$

This value compares well to the minimum lot size of 6.83 acres computed in my 1998 memorandum.



Clay Kilmer & Associates, Ltd.
Ground Water Professionals

Appendix

B 2088662

SFC CLERK RECORDING 08/17/2004

April 27, 1999

Mr. John Paul Garcia
P.O. Box 16452
Santa Fe, New Mexico 87506

RE: Responses to comments on the application for JP Garcia Land Use Proposal from the Santa Fe County Hydrologist and SEO Hydrology Staff

Dear Mr. Garcia:

I am transmitting this letter to you to respond to comments made by the Santa Fe County Hydrologist and a member of the hydrology staff of the State Engineer Office in review of the geohydrologic report that I prepared for your application last year. I have reviewed copies of correspondence and memos pertaining to your application as follows:

Memos

<u>To</u>	<u>From</u>	<u>Date</u>
Rudy Garcia	Jack Frost (SFC Hyd)	11-17-98
Donald Lopez (assistant SEO)	Tom Morrison (SEO Hyd)	12-4-98
Diana Lucero	Jack Frost	3-18-99

This letter contains a summary of the comments made by each of the reviewers of your report; my response to each is included. Comments offered by Mr. Frost in the two memos are combined in this analysis.

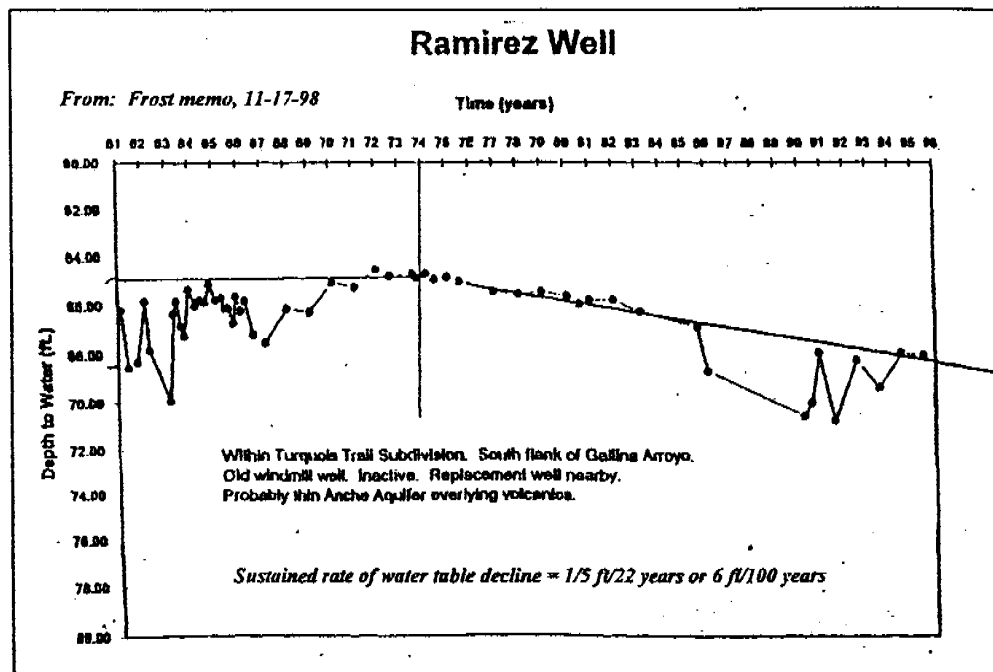
Comments by Jack Frost, County Hydrologist, 11-17-98, 3/18/99

Comment 1: *The area is well known for poor wells and reports of wells going dry.*

Response: No specific data on locations and details of problem wells is offered (what wells and where?). Furthermore, the Santa Fe County Land Development Code (Code) does not require the applicant to address water availability on other properties; the hydrogeologic report pertains to aquifer conditions on Mr. Garcia's property. The Code recognizes the variability in water availability and allows for variances to minimum lot size requirements based upon site-specific studies.

Comment 2: *There is evidence of water levels declining in the few wells monitored in the area.*

Response: Regional water level decline was specifically considered in the JP Garcia Hydrogeologic Report; USGS published data from a nearby well (15N8E25.141) is presented (Figure 4, Garcia hydrology report). Mr. Frost presents a hydrograph from the "Ramirez Well" (NMPM location not given). The data offered by Frost indicates a regional water table decline of 6 feet per 100 years. The data offered in the Garcia Report indicates a water table decline of 7 feet per 100 years (more conservative). Neither rate jeopardizes water availability on the Garcia property; this rate will reduce the aquifer thickness by only about 4 percent on the Garcia property in a 100-year period.



Comment 3: *The owner proposes to share the well between five lots, yet by comparison to a table created by the Bureau of Reclamation (attached) the test results are poor for a single family domestic well.*

Response: Mr. Garcia does not propose to share the well between five lots. Mr. Garcia proposes to allow individual or shared wells pursuant to NMSA 72-12-1; this is specifically allowed by the Code Article VII Section 6.4.7b. The well was drilled to demonstrate aquifer conditions and expected well performance on the Garcia property. The Garcia well exceeds minimum requirements for individual domestic wells set forth in the Santa Fe County Land Development Code's Hydrology Appendix (Hydrology Appendix), page 8. The Hydrology Appendix sets the minimum production requirement for an individual domestic well at 1 gallon per minute (gpm). Sustained tests on the Garcia well indicate that the well can sustain 3 gpm. No reference to a Bureau of Reclamation standard is

presented in the Code or Hydrology Appendix; further the Bureau of Reclamation data presented by Mr. Frost indicate that the Garcia well performance is more than one order of magnitude above prohibitive conditions for domestic wells.

DETERMINATION OF WATER AVAILABILITY (A) SANTA FE COUNTY DEVELOPMENT CODE

Recovery potential (RC) is an estimate of how much of the water in storage might be economically recovered by a properly designed well field. The number 0.8 shall be used, unless the applicant demonstrates a greater efficiency for the proposed well field. As an example, such efficiency could be demonstrated by a computer model showing that when 90% of the water in storage is depleted, there will still be sufficient flow to wells such that a ~~yield of 1 gpm~~ can be maintained without drawing water below the pump settings. In this example, RC = 0.9 (90%).

Santa Fe Land Code Appendix, page 8, setting acceptable well yield for single family residence at 1 gpm.

Comment 4: *Other lands exist in the area which could be subdivided, further increasing the demands on the aquifer.*

Response: Under the Hydrology Appendix Water Availability criteria, Mr. Garcia's proof of water availability rests on the amount of water available from storage under his tract. By this rationale, Mr. Garcia cannot develop at a density that will result in his using water in storage under others' properties. Applicants for future land developments will be required to demonstrate their own water availability, just as Mr. Garcia is required to demonstrate his water availability now.

Comment 5: *I expressed concern to both Garcia and Kilmer about well tests not conducted or supervised by a professional.*

Response: The Code does not specify that work pursuant to a geohydrologic report be performed by a professional; however the Hydrology Appendix does indicate that calculations of water availability from storage and from recharge (Sections 3,6; pgs 5, 10) should be made by a hydrologist, geologist or engineer. The storage calculation on the Garcia Report was performed by Clay Kilmer, (BS Geology, MA Water Resources, NGWA Certified Groundwater Professional #389).

Clay Kilmer conducted the drawdown portion and witnessed the later recovery portion of the first of three well tests that were performed on the Garcia Well. Mr. Kilmer also reduced and interpreted all data from all three of the well tests. Mr. Garcia (BS Engineering) conducted the testing using equipment and

instructions provided by Mr. Kilmer. All data provided by Mr. Garcia to Mr. Kilmer was utterly consistent with previous test data personally collected by Mr. Kilmer. Santa Fe County was notified verbally and in writing of the schedule for all of the testing performed at Mr. Garcia's well so that County personnel could visit the site to verify data being collected during well testing. No Santa Fe County representative verified any of the data collected during the testing.

Comments by Tom Morrison, State Engineer Office Hydrology Section, 12-4-98

Comment 1: (RE: Garcia well log) *Since the log indicates that water was first encountered at 230 feet and that water rose to about 93 feet below land surface, it is uncertain whether saturated conditions exist above 230 feet*

Response: Mr. Morrison speculates that the Garcia well penetrated an artesian aquifer and uses this incorrect assumption to severely limit his calculation of the amount of saturated thickness available to the Garcia well. The Garcia well penetrated saturated and unconsolidated sediments from a depth of 93 feet to a depth of 297 feet. Drill cuttings were examined and described by Clay Kilmer. The materials were predominantly silty sands, silts, sands and gravels.

A neighbor's well (RG-50757) is located about 400 feet west of the Garcia well. This well penetrated the water table at roughly the same depth as the Garcia well (90 feet) and found identical lithologic conditions to those found on the Garcia property; this well produced an estimated 10 gpm from zones between 90 feet and 110 feet. Despite the fact that data from Well RG-50757 and 17 other nearby wells was included in the Garcia Report, Morrison's analysis contains no references to any of these wells. The data from Well RG-50757 invalidates Morrison's assumptions about saturated thickness at the Garcia property.

Comment 2: *For this study, units containing predominantly sands or gravels will be selected...sandy-silty...zones are excluded....about 61 feet of the productive zones are present below the water level...the developer's calculations can be performed using a saturated thickness of 61 feet rather than 166.8 feet as follows:
A (water availability) = 12.5 acres x 61 ft x .075 (SY) x 0.8 (RP) = 45.75 acre-feet
MLS = U x acres/A = 0.25 AFY (U)/45.75 AF(A) = 6.83 acres*

Response: It has been mentioned that Mr. Morrison disregarded important well log information to arrive at an erroneous assessment of the aquifer thickness at the Garcia property, improperly reducing the saturated thickness from 204 feet to only 61 feet. Mr. Morrison also used the wrong void ratio to calculate the amount of water in storage. After asserting that only the sand and gravel zones contain water in storage (specific yield, SY); Mr. Morrison used a quantity of 7.5 % for the specific yield for sand and gravel. The Code Hydrology Appendix sets forth a standard value of 15% for specific yield.

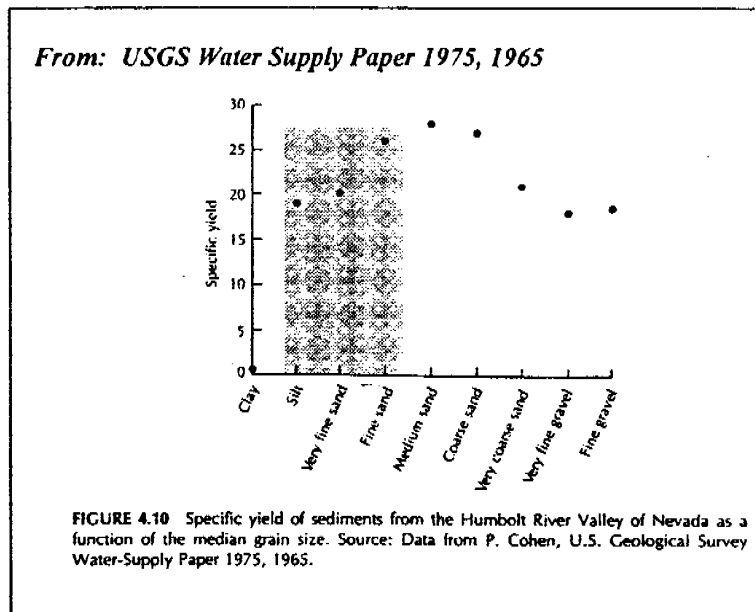
DETERMINATION OF WATER AVAILABILITY (A)		SANTA FE COUNTY DEVELOPMENT CODE				
EXHIBIT 3. BASIS FOR CALCULATION OF STANDARD VALUES OF A (WATER AVAILABILITY).						
The development code (Section 10.2.1 of Article III) contains standard values for A per acre of land in a subdivision. They are calculated as follows. (2 indicates values cited in code). SY etc. are defined in Appendix.						
<u>A Based on Storage</u>						
	SY	ST	RL	RC	S 1/	A 2/
HOMESTEAD	0.02	100	0.2	0.8	0.32	0.003
MOUNTAIN	0.02	50	0.25	0.8	.2	0.002
BASIN FRINGS	0.15	50	0.33	0.8	1.98	0.02*
BASIN	0.15	250	0.33	0.8	9.90	0.1*
1. S = AC x SY x ST x RL x RC. AC = 1 acre.						
2. A = S/100 and is expressed in acre-feet per acre per year.						
<i>From: the Santa Fe County Land Development Code Hydrology Appendix, Exhibit 3</i>						

The Code standard value for specific yield (SY) of 15% is based upon widely-accepted values used in the practice of hydrogeology for fine-grained sediments, such as those penetrated by the Garcia well. Several published values for specific yields of unconsolidated silt deposits are presented in the tables below and average in the 15% to 20 % range.

TABLE 4.3 Specific yields in percent (18)

Material	Specific Yield		
	Maximum	Minimum	Average
Clay	5	0	2
Sandy clay	12	3	7
Silt	19	3	18
Fine sand	28	10	21
Medium sand	32	15	26
Coarse sand	35	20	27
Gravelly sand	35	20	25
Fine gravel	35	21	25
Medium gravel	26	13	23
Coarse gravel	26	12	22

From: Fetter, 1988, Applied Hydrogeology, pg. 74.



Accepted values for specific yield for sand and gravel are even higher, on the order of 25%. By considering only the sandy or gravelly zones in the storage calculation, then using a specific yield of only 7.5% for these zones, Mr. Morrison underestimated the amount of water in storage at the Garcia property by a factor of more than two thirds. Mr. Morrison cites no references and offers no technical justification for using a sandy clay specific yield value for deposits of sand and gravel. No portion of Mr. Morrison's analysis can be supported using accepted hydrogeologic practices.

A graphic summary of the site conditions and a reasonable and conservative calculation of the water available from storage at the Garcia property and the minimum lot size calculation are attached to this submittal, along with a copy of the Garcia well log and test plot. This summary demonstrates that, according to the Code Hydrology Appendix, adequate water is available from storage beneath the Garcia property to support 2 1/2-acre density residential development.

I conclude that Santa Fe County Staff and the New Mexico State Engineer Office Staff did not use the protocol of the Hydrology Appendix in review of the hydrology submittal for the land division application. Each review omits elements of the Code, the Hydrology Appendix, or the site data that tend to support approval of the application. Finally, the reviews presented by each do not agree with each other.

JP Garcia
April 27, 1999
page 7

2088668

SFC CLERK RECORDING 08/17/2004

- The Hydrology Appendix clearly states that 1 gpm is adequate for a domestic well, yet Mr. Frost bases his recommendation for denial of the application on the grounds that the Garcia well yield of 3 gpm is not adequate for a residence.
- The Hydrology Appendix sets forth a standard value of 15% for average specific yield in the Basin Fringe area, yet Mr. Morrison uses a value of only 7% on sand and gravels to form the basis for his recommendation for denial of the application.
- Messrs. Frost and Morrison recommend denial of the application for two completely different reasons. The only common elements between the two analyses are that both fail to apply provisions of the Hydrology Appendix and both omit critical published and/or site data that would indicate that the application should be approved.

I hope that the information contained in this letter is adequate to meet your needs in reviewing your options for the Garcia application. If you have any questions do not hesitate to contact me.

Sincerely,

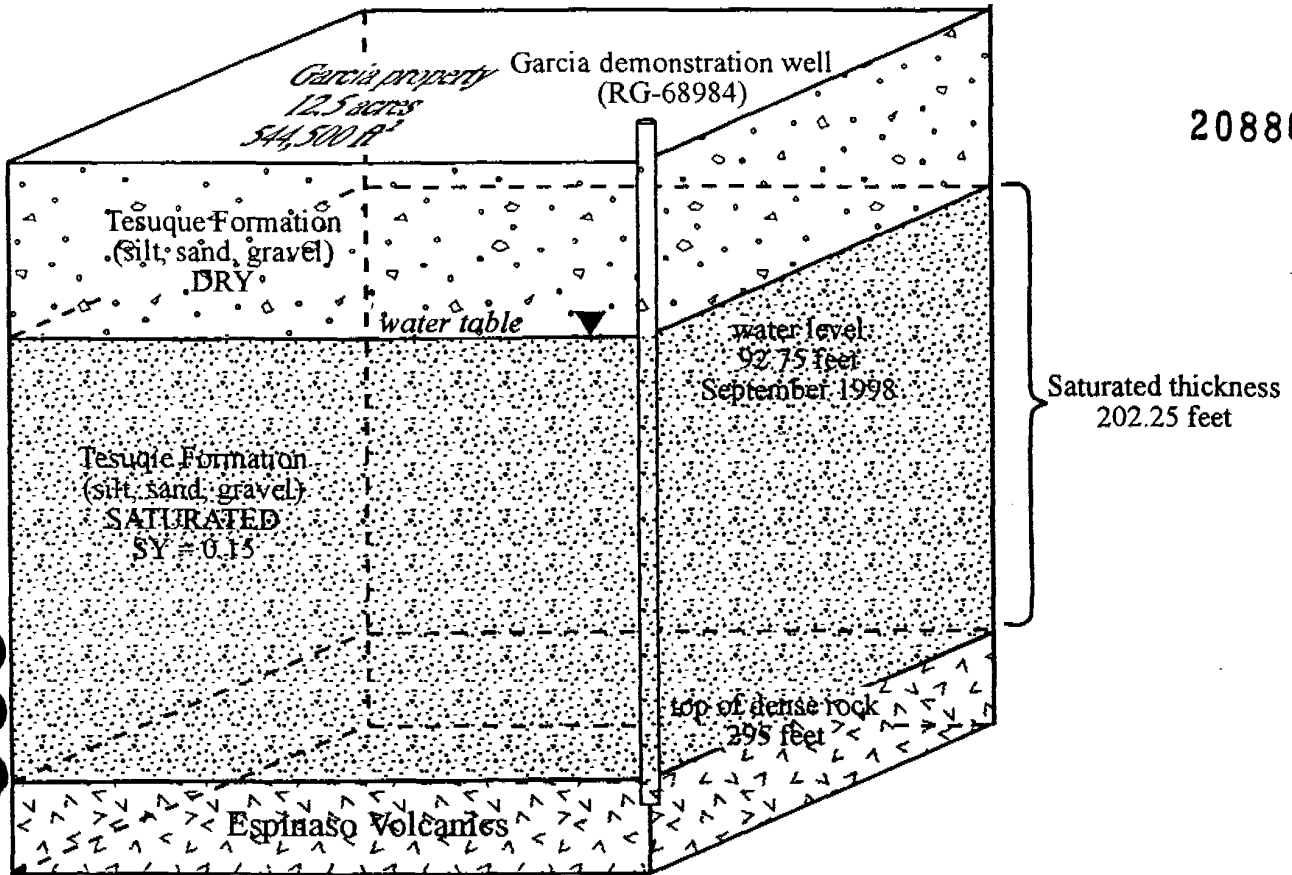


L. Clay Kilmer
Hydrogeologist, CGWP

JP Garcia Water Availability Assessment

SFC CLERK RECORDING 08/17/2004

2088669



Minimum Lot Size (MLS) = U/A

where

U = Use, acre-ft per year per lot (=0.25 AFY, by Code rule)

A = Availability per acre (acre-feet per year)

$$S = 12.5 \text{ acres} \times 0.15 \times 202 \times 1.0 \times 0.8 / 100 / 12.5 \text{ ac} = .24 \text{ acre-ft per year per acre}$$

For water available from storage per year per acre

for 100 years, A = S/100/acres (water in storage per acre per year)

$$\begin{aligned} \text{MLS} &= U/A \text{ (use} = 0.25 \text{ AFY/lot)} \\ &= .25 / .24 \\ &= 1.03 \text{ Acres} \end{aligned}$$

$$S = (AC \times SY \times ST \times RL \times RC) / 100 / AC$$

where

S = available from storage per year for 100 years (acre-feet)

AC = area in acres (12.5 acres)

SY = Specific yield (percent = .15)

ST = Saturated thickness (= 202 ft from Garcia well log)

RL = Reliability factor (= 1.0 with geohydrology report)

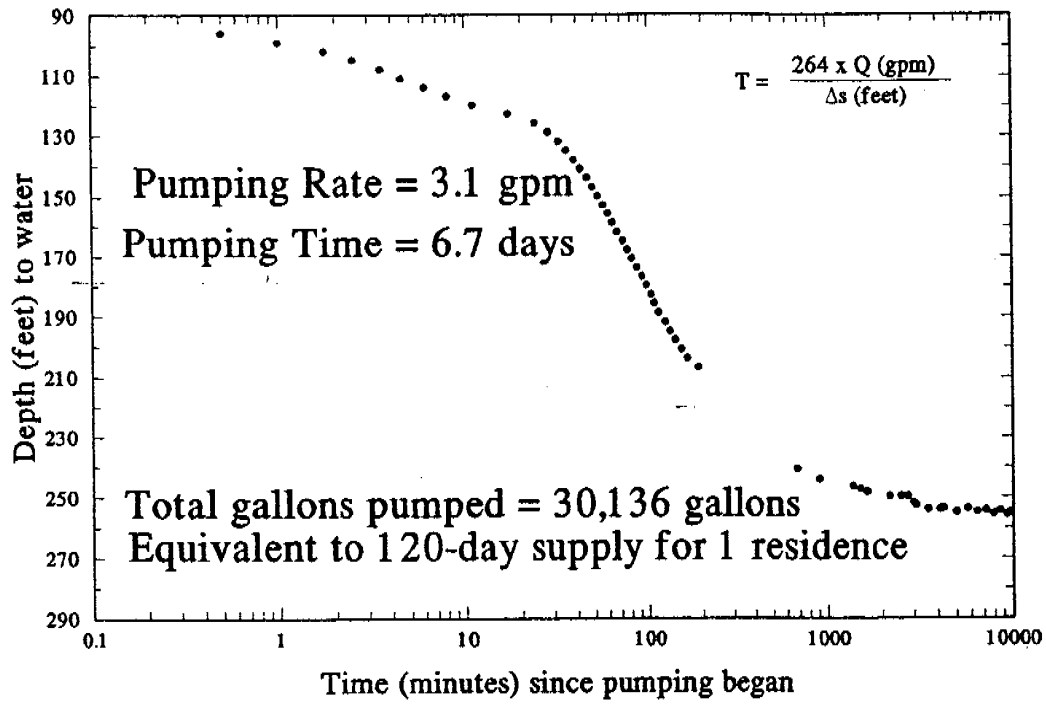
RC = Recovery factor (= 0.80 by Code rule)

Based on lot size of 2.5 acres, each of 5 tracts would have availability of .606 acre-feet per year

2088670

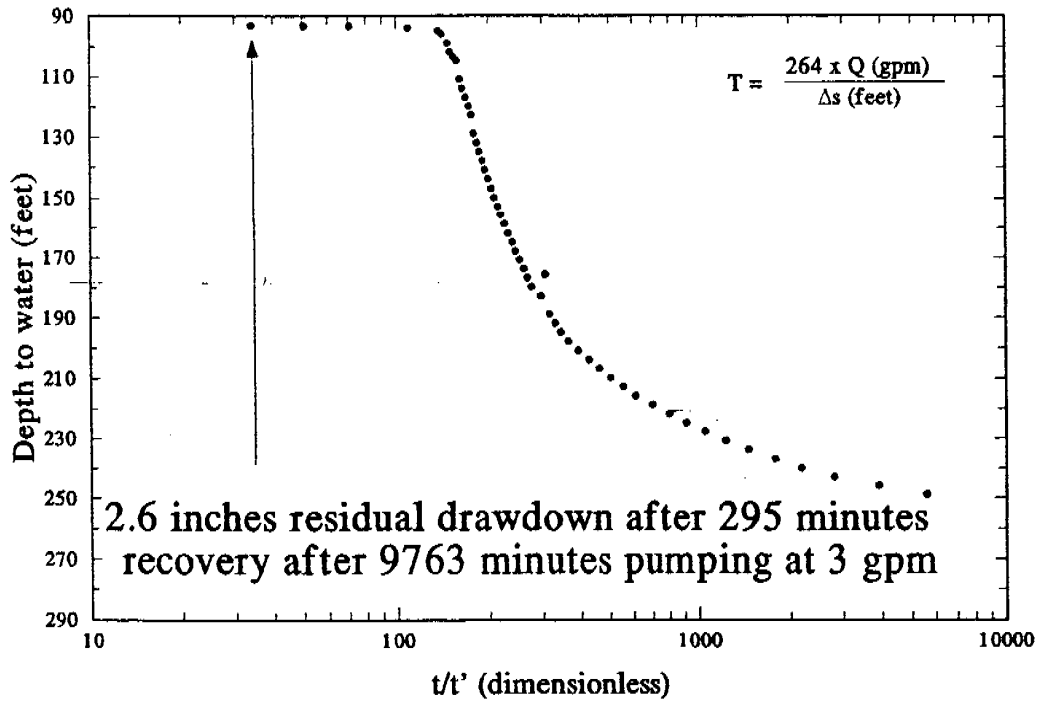
SFC CLERK RECORDING 08/17/2004

Pumping Test Drawdown Plot JP Garcia Well RG-68684, 9/18/98-9/25/98



Pumping Test Recovery Plot
JP Garcia Well RG-68684, 9/25/99

2088671



Comparison of Specific Yield Values

Tom Morrison memo, Garcia Hydro Report and USGS Water Supply Paper 1975

State Engineer Office Well Record log for the JP Garcia Well

DEPTH IN FEET	DIAMETER IN INCHES	WELL LOG	GENERAL LOG OF BORE
0	10	10	SOIL - SANDY SILTY LOESS - 4 INCH BROWN
5	15	5	SOIL -
10	15	15	SOIL -
15	15	15	SOIL -
20	15	20	SOIL -
25	15	25	SOIL -
30	15	30	SOIL -
35	15	35	SOIL -
40	15	40	SOIL -
45	15	45	SOIL -
50	15	50	SOIL -
55	15	55	SOIL -
60	15	60	SOIL -
65	15	65	SOIL -
70	15	70	SOIL -
75	15	75	SOIL -
80	15	80	SOIL -
85	15	85	SOIL -
90	15	90	SOIL -
95	15	95	SOIL -
100	15	100	SOIL -
105	15	105	SOIL -
110	15	110	SOIL -
115	15	115	SOIL -
120	15	120	SOIL -
125	15	125	SOIL -
130	15	130	SOIL -
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140	15	140	SOIL -
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150	15	150	SOIL -
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160	15	160	SOIL -
165	15	165	SOIL -
170	15	170	SOIL -
175	15	175	SOIL -
180	15	180	SOIL -
185	15	185	SOIL -
190	15	190	SOIL -
195	15	195	SOIL -
200	15	200	SOIL -
205	15	205	SOIL -
210	15	210	SOIL -
215	15	215	SOIL -
220	15	220	SOIL -
225	15	225	SOIL -
230	15	230	SOIL -
235	15	235	SOIL -
240	15	240	SOIL -
245	15	245	SOIL -
250	15	250	SOIL -
255	15	255	SOIL -
260	15	260	SOIL -
265	15	265	SOIL -
270	15	270	SOIL -
275	15	275	SOIL -
280	15	280	SOIL -
285	15	285	SOIL -
290	15	290	SOIL -
295	15	295	SOIL -
300	15	300	SOIL -

Water-Saturated Zones depth (ft)	Tom Morrison 12-4-98 memo	USGS Water Supply Paper 1975	Garcia Hydro Report Kiltner, 1998
96-100 ft	7.5%	25%	7.5%
100-210	0%	18%	7.5%
210-215	0%	18%	7.5%
215-230	7.5%	18%	7.5%
230-260	7.5%	25%	7.5%
260-275	0%	18%	7.5%
275-285	0%	18%	7.5%
285-297	7.5%	25%	7.5%

SY, Weighted Average 2.2% 19.6% 7.5%

2088672

well log 3/7/98
P. J. F. Caldwell

The enclosed is a well log, to the best of the knowledge and belief, the log was prepared from the information furnished to the State Engineer. All entries, except those indicated as corrected or corrected by the State Engineer, are those of the State Engineer. The log is a preliminary report and should not be used for legal purposes. The log is a preliminary report and should not be used for legal purposes.

Published Typical Values of Specific Yield for sediment types penetrated by the Garcia Well

TABLE 4.3 Specific yields in percent (18)

Material	Specific Yield		
	Maximum	Minimum	Average
Clay	5	0	2
Sandy clay	12	3	7
Silt	19	3	18
Fine sand	28	10	21
Medium sand	32	15	26
Coarse sand	35	20	27
Gravelly sand	35	20	25
Fine gravel	35	21	25
Medium gravel	26	13	23
Coarse gravel	26	12	22

From: Fetter, 1988, Applied Hydrogeology, pg. 74.

2088673

Published Typical Values of Specific Yield for sediment types penetrated by the Garcia Well

From: *USGS Water Supply Paper 1975, 1965*

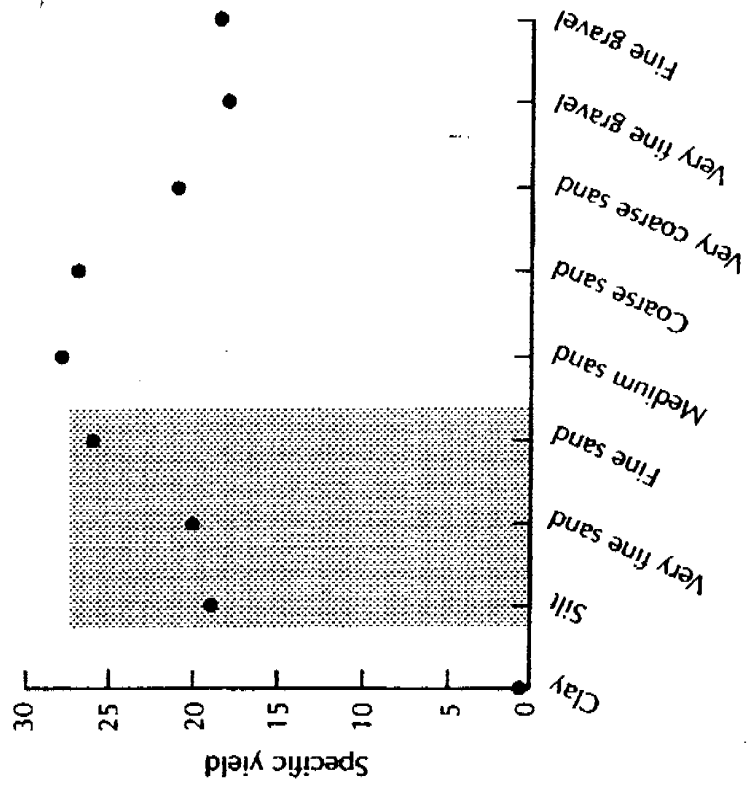


FIGURE 4.10 Specific yield of sediments from the Humboldt River Valley of Nevada as a function of the median grain size. Source: Data from P. Cohen, U.S. Geological Survey Water-Supply Paper 1975, 1965.

2088674

Santa Fe County Land Code Hydrology Appendix

Standard Values for Specific Yield (SY)

DETERMINATION OF WATER AVAILABILITY (A) SANTA FE COUNTY DEVELOPMENT CODE

EXHIBIT 3. BASIS FOR CALCULATION OF STANDARD VALUES OF A (WATER AVAILABILITY).

The development code (Section 10.2.1 of Article III) contains standard values for A per acre of land in a subdivision. They are calculated as follows. (* Indicates values cited in code). SY etc. are defined in Appendix.

A Based on Storage

	SY	ST	RL	RC	S 1/	A 2/
HOMESTEAD	0.02	100	0.2	0.8	0.32	0.003
MOUNTAIN	0.02	50	0.25	0.8	.2	0.002
BASIN FRINGE	0.15	50	0.33	0.8	1.98	0.02*
BASIN	0.15	250	0.33	0.8	9.90	0.1*

1. S = AC x SY x ST x RL x RC. AC = 1 acre.
2. A = S/100 and is expressed in acre-feet per acre per year.

From: the Santa Fe County Land Development Code Hydrology Appendix, Exhibit 3

**Garcia property in Basin Fringe; Code Standard SY
value = 0.15, or 15%**

2088675

**Santa Fe County Land Development Code
Hydrology Appendix, page 8**

DETERMINATION OF WATER AVAILABILITY (A) SANTA FE COUNTY DEVELOPMENT CODE

Recovery potential (RC) is an estimate of how much of the water in storage might be economically recovered by a properly designed well field. The number 0.8 shall be used, unless the applicant demonstrates a greater efficiency for the proposed well field. As an example, such efficiency could be demonstrated by a computer model showing that when 90% of the water in storage is depleted, there will still be sufficient flow to wells such that a yield of 1 gpm can be maintained without drawing water below the pump settings. In this example, RC = 0.9 (90%).

*Santa Fe County Land Development Code
Hydrology Appendix, page 8, setting acceptable well yield for
single family residence at 1 gpm*

2088676

Bureau of Reclamation table

Jack Frost 11-17-98 memo

Garcia Well
Y R 68984

TRANSMISSIVITY										
FT ² /FT/DAY (ft ² /day)	10 ⁰ 10 ¹ 10 ² 10 ³ 10 ⁴ 10 ⁵ 10 ⁶ 10 ⁷ 10 ⁸ 10 ⁹ 10 ¹⁰									
FT ² /FT/MIN (ft ² /min)	10 ⁻² 10 ⁻¹ 10 ⁰ 10 ¹ 10 ² 10 ³ 10 ⁴ 10 ⁵ 10 ⁶ 10 ⁷ 10 ⁸ 10 ⁹ 10 ¹⁰									
GAL/FT/DAY (gal/ft/day)	10 ⁰ 10 ¹ 10 ² 10 ³ 10 ⁴ 10 ⁵ 10 ⁶ 10 ⁷ 10 ⁸ 10 ⁹ 10 ¹⁰									
METERS ² /METER/DAY (m ² /day)	10 ⁻² 10 ⁻¹ 10 ⁰ 10 ¹ 10 ² 10 ³ 10 ⁴ 10 ⁵ 10 ⁶ 10 ⁷ 10 ⁸ 10 ⁹ 10 ¹⁰									
SPECIFIC CAPACITY (gal/mia/ft)	10 ⁰ 10 ¹ 10 ² 10 ³ 10 ⁴ 10 ⁵ 10 ⁶ 10 ⁷ 10 ⁸ 10 ⁹ 10 ¹⁰									
WELL POTENTIAL										
UNLIKELY	VERY GOOD	GOOD	POOR	FAIR	GOOD	FAIR	POOR	INFEASIBLE		
10 ⁰	10 ¹	10 ²	10 ³	10 ⁴	10 ⁵	10 ⁶	10 ⁷	10 ⁸	10 ⁹	10 ¹⁰
10 ¹	10 ²	10 ³	10 ⁴	10 ⁵	10 ⁶	10 ⁷	10 ⁸	10 ⁹	10 ¹⁰	10 ¹¹
10 ²	10 ³	10 ⁴	10 ⁵	10 ⁶	10 ⁷	10 ⁸	10 ⁹	10 ¹⁰	10 ¹¹	10 ¹²
10 ³	10 ⁴	10 ⁵	10 ⁶	10 ⁷	10 ⁸	10 ⁹	10 ¹⁰	10 ¹¹	10 ¹²	10 ¹³
10 ⁴	10 ⁵	10 ⁶	10 ⁷	10 ⁸	10 ⁹	10 ¹⁰	10 ¹¹	10 ¹²	10 ¹³	10 ¹⁴
10 ⁵	10 ⁶	10 ⁷	10 ⁸	10 ⁹	10 ¹⁰	10 ¹¹	10 ¹²	10 ¹³	10 ¹⁴	10 ¹⁵
10 ⁶	10 ⁷	10 ⁸	10 ⁹	10 ¹⁰	10 ¹¹	10 ¹²	10 ¹³	10 ¹⁴	10 ¹⁵	10 ¹⁶
10 ⁷	10 ⁸	10 ⁹	10 ¹⁰	10 ¹¹	10 ¹²	10 ¹³	10 ¹⁴	10 ¹⁵	10 ¹⁶	10 ¹⁷
10 ⁸	10 ⁹	10 ¹⁰	10 ¹¹	10 ¹²	10 ¹³	10 ¹⁴	10 ¹⁵	10 ¹⁶	10 ¹⁷	10 ¹⁸
10 ⁹	10 ¹⁰	10 ¹¹	10 ¹²	10 ¹³	10 ¹⁴	10 ¹⁵	10 ¹⁶	10 ¹⁷	10 ¹⁸	10 ¹⁹
10 ¹⁰	10 ¹¹	10 ¹²	10 ¹³	10 ¹⁴	10 ¹⁵	10 ¹⁶	10 ¹⁷	10 ¹⁸	10 ¹⁹	10 ²⁰

NOTES: Transmissivity (T) = KM where
 K = Permeability
 M = Saturated thickness of the aquifer
 Specific capacity values based on pumping period of approximately
 8-hours but are otherwise generalized.

FIGURE 2-4.—Comparison of transmissivity, specific capacity, and well potential. 105-D-1406.

SC = 0.02 gpm/ft

Garcia Well Specific Capacity = .02 gpm/ft
"Infeasible" Well Specific Capacity = .001 gpm/ft

Garcia Well specific capacity 20 times the "minimum" for domestic wells in Bureau of Reclamation table submitted by Frost

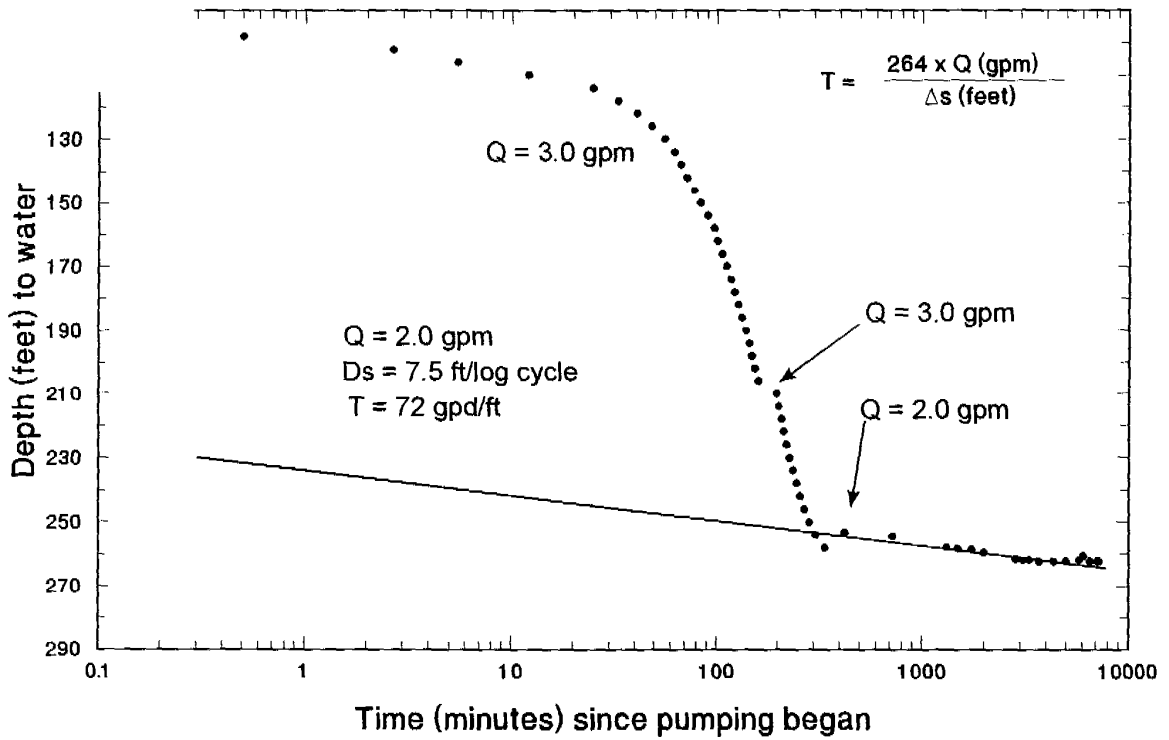
Appendix



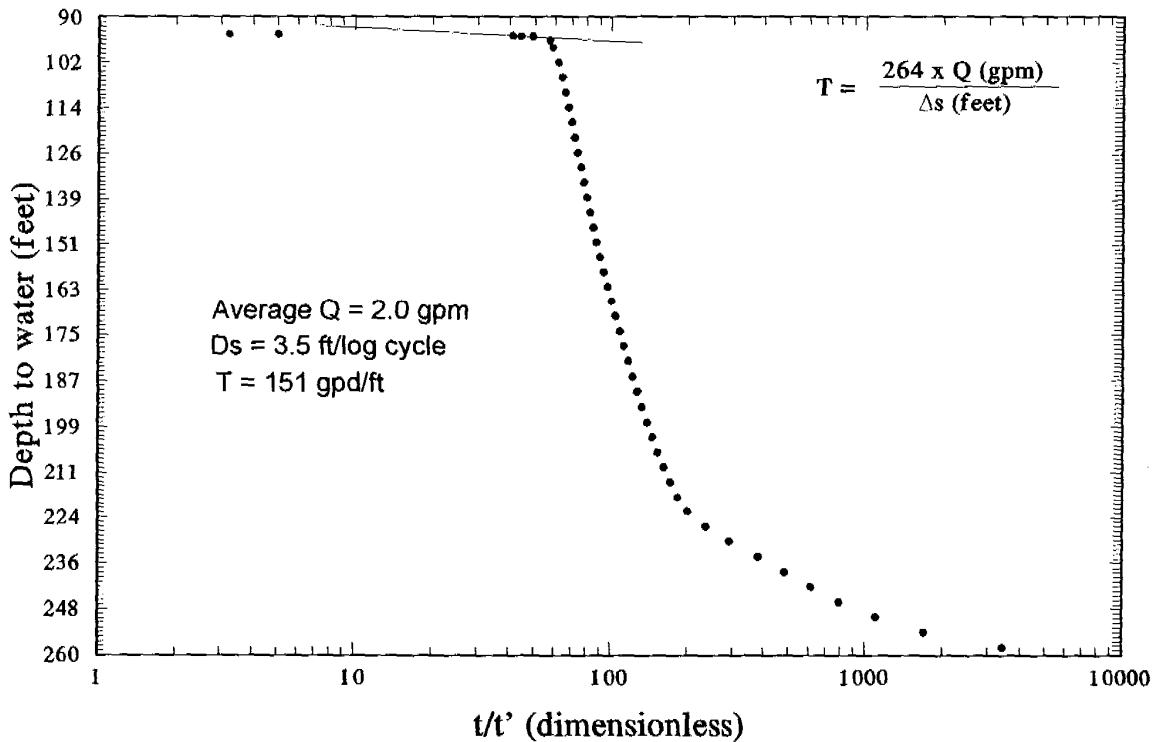
Pumping Test Drawdown Plot
JP Garcia Well 1 Test, Nov 1 - 6, 2000

2088678

SFC CLERK RECORDING 08/17/2004



Pumping Test Recovery Plot
Garcia Well 1, Nov 6 - 8, 2000



PUMPING TEST PRODUCTION WELL DRAWDOWN DATA
 LOCATION: JP GARCIA WELL NO 1 (RG-68984)
 DURATION OF DRAWDOWN (minutes): 7200
 STATIC WATER LEVEL (feet): 94.5
 CASING DIAMETER (inches): 4.50
 DESCRIPTION OF MEASUREMENT: top casing
 DATA COLLECTED BY: JP GARCIA
 STARTING DATE: 11/1/2000
 BEGINNING TOTALIZER METER READING (gal): 12644
 ENDING TOTALIZER METER READING (gal): 26630
 TOTAL GALLONS PUMPED: 13986
 AVERAGE PUMPING RATE (gpm) 2

2088679

CLOCK TIME	t (minutes)	WATER LEVEL	DRAW DOWN	Q (gpm)	COMMENT
9:15 AM	0.00	94.5	0	0	BEGIN DD
	0.50	98	3.5	3	
	2.66	102	7.5		
	5.45	106	11.5		
	12.00	110	15.5		
	24.75	114	19.5		
	32.75	118	23.5		
	40.50	122	27.5		
	48.00	126	31.5		
	55.25	130	35.5		
	61.75	134	39.5		
	66.50	138	43.5		
	71.45	142	47.5		
	77.29	146	51.5		
	83.25	150	55.5		
	89.66	154	59.5		
	96.95	158	63.5	3	
	100.25	162	67.5		
	105.90	166	71.5		
	111.00	170	75.5		
	116.45	174	79.5		
	121.75	178	83.5		
	127.00	182	87.5		
	132.75	186	91.5		
	138.90	190	95.5	3	
	143.33	194	99.5		
	148.00	198	103.5		
	153.10	202	107.5		
	158.55	206	111.5		
	195.90	210	115.5		
	201.10	214	119.5	3	
	206.75	218	123.5		
	212.95	222	127.5		
	218.99	226	131.5		
	227.00	230	135.5		
	235.75	234	139.5	2.5	
	245.33	238	143.5		
	255.50	242	147.5		
	268.45	246	151.5		

2088680

CLOCK TIME	t (minutes)	WATER LEVEL	DRAW DOWN	Q (gpm)	COMMENT
	284.32	250	155.5		
	306.00	254	159.5		
	336.55	258	163.5	2	
	420.00	253.3	159.3	2	
	720.00	254.5	160	2	
	1305.00	257.8	163.3	1.96	
	1485.00	258.2	163.7	1.97	
	1725.00	258.5	164	1.9	
	1980.00	259.5	165	1.98	
	2835.00	261.5	167	1.9	
	3060.00	261.8	167.3	1.88	
	3285.00	261.8	167.3	1.83	
	3665.00	262.2	167.7	1.93	
	4335.00	262.2	167.7	1.88	
	4980.00	262.2	167.7	1.89	
	5775.00	261.8	167.3	1.86	
	6045.00	260.6	166.1	1.87	
	6525.00	262.2	167.7	1.87	
	7125.00	262.2	167.7	1.85	
	7200.00	262.2	167.7	1.87	End DD

PUMPING TEST PRODUCTION WELL RECOVERY DATA
 LOCATION: GARCIA WELL RG-68684
 DURATION OF DRAWDOWN: (minutes) 7200
 STATIC WATER LEVEL: (feet) 94.5
 AVERAGE DISCHARGE RATE:(gpm) 2
 DATA COLLECTED BY JP GARCIA
 STARTING DATE 11/06/00
 STARTING TIME 09:15

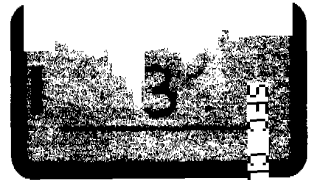
2088681

t (minutes)	t/t'	M-scope	Water Level	Residual Drawdown	Comments
0.0		52125.7	262.2	167.7	End DD
2.1	3429.6	52122	258	163.5	
4.3	1695.1	52118	254	159.5	
6.6	1100.2	52114	250	155.5	
9.1	792.2	52110	246	151.5	
11.8	613.8	52106	242	147.5	
15.0	482.6	52102	238	143.5	
19.0	380.9	52098	234	139.5	
24.7	293.0	52094	230	135.5	
30.5	237.1	52090	226	131.5	
36.0	201.0	52086	222	127.5	
39.6	183.0	52082	218	123.5	
42.3	171.4	52078	214	119.5	
44.9	161.4	52074	210	115.5	
47.3	153.1	52070	206	111.5	
49.8	145.7	52066	202	107.5	
52.1	139.2	52062	198	103.5	
54.7	132.7	52058	194	99.5	
57.1	127.1	52054	190	95.5	
59.5	122.0	52050	186	91.5	
62.0	117.1	52046	182	87.5	
64.6	112.5	52042	178	83.5	
67.1	108.3	52038	174	79.5	
69.9	104.0	52034	170	75.5	
72.7	100.1	52030	166	71.5	
75.3	96.7	52026	162	67.5	
78.0	93.4	52022	158	63.5	
80.6	90.3	52018	154	59.5	
83.2	87.5	52014	150	55.5	
85.8	85.0	52010	146	51.5	
88.3	82.6	52006	142	47.5	
91.0	80.2	52002	138	43.5	
93.5	78.0	51998	134	39.5	
96.2	75.8	51994	130	35.5	
98.9	73.8	51990	126	31.5	
101.8	71.8	51986	122	27.5	
104.5	69.9	51982	118	23.5	
107.5	68.0	51978	114	19.5	
110.7	66.1	51974	110	15.5	
114.3	64.0	51970	106	11.5	
118.1	62.0	51966	102	7.5	
125.0	58.6	51962	98	3.5	
128.9	56.9	51960	96	1.5	
150.0	49.0	51959	95	0.5	

t (minutes)	t/t'	M-scope	Water Level	Residual Drawdown	Comments
167.0	44.1	51958.9	94.9	0.4	
180.0	41.0	51958.8	94.8	0.3	
1800.0	5.0	51958.5	94.5	0	
3240.0	3.2	51958.5	94.5	0	End rec.

2088682

SFC CLERK RECORDING 08/17/2004



Paul:

Per our 'phone conversation yesterday, Here is, as near as I can reconstruct, the list of items mentioned. The reasons for mention of these items fall into a few different categories.

Some are just artifacts from earlier documents.

Some are mentioned to keep the thrust of the planning authority and responsibility focused on the Planning Committee rather than on the Planning Staff. The clarification of the necessity of involvement of the Planning Department is welcome, it is just the emphasis on which I am commenting.

Some comments derive directly from the lack of adequate funding given to the Planning Department. It seems less that straight forward to say: "the Staff shall....", or the Community may.....", only to be followed a sentence or more later by: "depending upon the availability of....." When, in fact, an adequate availability is not being funded.

Finally, some comments have to do with the process to be followed by those seeking Planning Authority. In our conversation, I made no attempt to design a correction for the fact that the ordinance neither reflects recent practice nor what I think is the best intent of the General Plan. Below, I make a quick attempt to separate the items needed to be generated for presentation to and approval of the Planning Department from the presentation of these items by the Planning Department and the Community to the BCC. My interpretation of the process may be wrong; if so, the attempt is invalid.

I have also chosen to omit the CDRC from the cycle. Frankly this is for many reasons. The Planning Department is already making a recommendation to the BCC on the application; another recommendation from the CDRC seems redundant. The CDRC exists to review Development requests and to compare them to existing relevant ordinances. Planning Authority is a very different thing and lies much more within the expertise of the Planning Department than that of the CDRC.

Finally, the CDRC, in the original ordinance, was involved only in the single step of determining that the applicant has met the requirements of section 2.1 or 3.1 (as applicable). In practice, I understand that this is rarely a separate step, and it is certainly nothing better for the Planning Department to recommend upon. The flexibility of the Community Boundaries certainly leads in this direction. I have no hidden agenda in this; I am just trying to make things as logical and easy as possible.

COMMENTS:

Page 1.

Line 37, Section 1.2.3

The first sentence would be fun to diagram. Something such as: "Community planning is intended to allow communities to work at their own pace limited only by available County and community resources." It is shorter, and much more direct about there being limited resources.

Page 3 and 4.

I will offer an attempt at reorganizing Sections 2 through 4.3.3 at the end of this review.

NOTE: there seems to be no 4.4

Page 5.

Line 46, Section 4.6.1

The first sentence says that the County shall assist. This is a legal term in a legal document. It is an imperative. With limited resources, the County may not be able to assist. It should not say shall unless it means it. In the second sentence there are two small issues. Given changes made elsewhere, the involvement of the County is no longer totally "at the community's request", and the "based on available or budgeted resources" should (as above) be more pointedly stated as a limitation.

Page 7.

Line 6, Section 5.3.1 b)

As boundaries have already been defined before Planning Authority was received, should this not say something such as: "continue to review"?

2088684

Line 9 the word "and" should be "or".

Line 14, Section 5.3.1 d) 1)

Should read: " Residential, commercial, institutional and industrial development.."

Line 18, Section 5.3.1 d) 5)

Might better read: "Traffic, roads and transportation needs".

Line 32, Section 5.3.2

"The Community Planning Committee with County Staff assistance will....." might better represent where you want the bulk of the work, responsibility and decision making to come from. It is a community plan, not a staff plan (at least by design).

Line 44 (and following), Section 5.3.2 c)

I think Commercial and industrial implications of the envisioned growth should also be considered. As much as institutional needs are listed, the commercial and even the possible industrial needs should be considered. It has already been suggested that an appropriate place for a "Mining District" be a consideration in the San Marcos District Plan..

Page 8.

29, Section 5.3.2 f) 1)

Might better read: "...roads, traffic patterns and other transportation needs".

Page 9.

Line 12, Section 5.3.3

The part of the sentence from page 6, line 43, section 5.3.1 which reads: "and code modifications to address these problems." Might better be lifted and put here. The result would read "The Committee shall work with staff to identify and the need for and to develop ordinances to enact the policies to be adopted in the community plan. As it now reads, 5.3.3 looks like one considers ordinances after the plan is approved. It would seem better to have ordinances integral to the initial approval.

Page 9.

Line 39 (and following) Section 5.3.5

Just an observation that being directed to resolve by consensus, communities are now being directed only to use a defined consensus process - which definition does not include the necessity of reaching a consensus. I think this is a more realistic direction; I just want to be sure this is the intent.

Page 10.

Line 9, Section 5.4 I)

The "i" is vestigial.

The sentence beginning : "The County may assist...." Is very vague. It implies that the Staff may assist if someone (The Committee ?) wishes to consider additional planning elements. I think it may wish to say that the BCC, the Planning Department and/or the Committee may add additional (required?) planning elements with which the Staff will assist in undertaking.

What follows is a very quick effort at reorganizing the process description. Please note that the CDRC may be included simply by changing XXXXXX :

SECTION 2 - TRADITIONAL COMMUNITY DESIGNATIONS

2.1 Guidelines for determining Traditional Community status include:

- a) continuous settlement since 1925;
- b) a historic pattern of diverse and mixed community land uses which has carried through to the present;
- c) presence of historic structures; and
- d) existence of a village center(s).

~~2.2 Any community meeting the guidelines as set forth in Subsection 2.1 may appear before the Board to request Traditional Community status.~~

- ~~a) supporting documentation shall be reviewed by the CDRC which shall make a recommendation to the Board.~~
- ~~b) the Board shall make a determination on whether the criteria have been met based on documentation and public testimony.~~

SECTION 3 - CONTEMPORARY COMMUNITY DESIGNATIONS

3.1 Guidelines for determining Contemporary Communities status include:

- a) located away from traditional settlements as a result of either large subdivisions or many adjacent small land divisions; and
- b) located in or near traditional settlement areas but the dominant development pattern has been determined by land subdivision or land platting, not by the social or functional needs of Traditional Communities.

~~3.2 Any community meeting the guidelines as set forth in Subsection 3.1 above may appear before the Board to request Contemporary Community status.~~

- ~~a) supporting documentation shall be reviewed by the CDRC which shall make a recommendation to the Board.~~
- ~~b) the Board shall make a determination on whether the criteria have been met based on documentation and public testimony.~~

SECTION 4 - PLANNING PROCESS

4.1 Application Process

4.1.1 Any Traditional or Contemporary Community may **apply for authorization** to prepare a Community Plan. Two or more communities may choose to do a joint Community Plan.

4.1.2 Participation and Representation

- a) Any community undertaking a Community Plan shall first create a Planning Committee ~~that shall be recognized by the Board.~~ Members of this Committee shall be residents, **property owners and business owners in** and property owners of the community and be representative of its diversity. Once this Committee is defined and organized, planning activities may begin. Where other communities are affected by the planning effort, those communities shall receive reasonable notice of the planning effort and the Planning Committee meetings.
- b) All planning sessions and activities shall be open to the public and advertised throughout the community. Open discussion and diversity of opinion shall be encouraged. The Community Plan shall document **resident, property owner and business owner** resident/owner participation and representation.
- c) All planning sessions and activities shall be recorded.

4.1.3 A Planning Committee shall apply to the Board to proceed with a Community Plan. The letter of application to begin community planning shall include:

New) Evidence of meeting the requirements of Section 2.1 or 3.1 as applicable.

- a) list of members of the initial Planning Committee, at the time of application. **The planning committee shall be open for new membership throughout the planning process, provided new members meet the criteria outlined in Section 4.1.2 a) of this ordinance.**
- b) conditions which justify undertaking a Community Plan.
- c) a public participation plan assuring diverse representation of community residents, and property owners, **and business owners. A public participation plan may include but is not limited to the following: public meetings, surveys, establishment of topic specific subcommittees, outreach to community groups and interested parties, and conducting focus groups.**

- d) any request for County staff involvement, facilitation of meetings, use of County facilities, mapping and other available resources.
- e) a description of community commitment in terms of resources to be given to the process.
- f) a map of the existing and/or proposed community boundary.
- g) if a community is seeking Critical Planning Area designation, documentation of specific circumstances or problems that address criteria as set forth in Section 4.5.
- h) recommendation of a community contact person or organization so that the County may notify the community about development projects and other pertinent issues.
- i) proof of reasonable attempts to notify the affected property owners.

4.1.4 All submittals shall be reviewed by staff and presented by the Planning Committee and community members to the Board with staff recommendations. The Board shall review the submittal, review staff recommendations and determine at a public hearing whether to proceed with a Community Plan. The Board may specify planning elements which need to be included, and areas that should be included in the Community Plan. The Board shall determine the extent of County staff involvement and resources that shall be provided to the planning effort with the community.

4.2 Traditional Community Boundaries

4.2.1 Boundaries shall be proposed for a Traditional Community at the time of application to proceed with a Community Plan. ~~and~~ **The Board shall approve the initial boundary based on criteria as set forth in Subsection 4.2.2 and as part of directing a community to begin a planning process. The final planning area boundary may be amended through the planning process and shall be determined upon adoption of the Community Plan.**

4.2.2 Criteria to be considered when altering or creating a traditional community boundary and a Traditional Community Zoning District include:

- a) natural resource limitations, such as water quantity.
- b) infrastructure limitations and needs.
- c) conformance with the Traditional Community Guidelines as set forth in Subsection 2.1.
- d) uninterrupted and inward or outward peninsulas shall be generally avoided.

~~4.2.3 Any amendment to the current zoning and density requirements requires that an ordinance amendment be adopted by the Board.~~

4.3 Contemporary Community Boundaries

4.3.1 Boundaries shall be proposed for a Contemporary Community at the time of application to proceed with a Community Plan. ~~and~~ **The Board shall approve the initial boundary based on criteria as set forth in Subsection 4.3.2 and as part of directing a community to begin a planning process. The final planning area boundary may be amended through the planning process and shall be determined upon adoption of the Community Plan.**

4.3.2 Criteria to be considered when altering or creating a contemporary boundary include:

- a) natural resource limitations, such as water quantity.
- b) infrastructure limitations and needs.
- c) integration of a variety of mixed uses and appropriate contiguous areas that support community functions.
- c) uninterrupted and inward or outward peninsulas shall be generally avoided.

~~4.3.3 Any amendment to the current zoning and density requirements requires that an ordinance amendment be adopted by the Board.~~

There are various ways in which things could be simplified further, such as taking 4.3 and making it a subsection of section 3 (where is probably better belongs), and doing the same with Section 4.2 by making it a subsection of Section 2.

2088687

3 and 4.3.3 are struck because there is no need to have them in the ordinance. They are obvious truisms which only confuse by their placement.

As you can see above, what I have struck is double lined and what I have added is bold without underlining.

I hope this makes some sense.

____ Hugh

SFC CLERK RECORDING 08/17/2004

Suggested Amendments Based on Comments Received Regarding the Proposed Refinement of the Community Planning Ordinance

Note: New language appears in **BOLD, CAPITAL LETTERS** and
Replaced language appears as ~~highlighted strikethrough~~

Page 1:

- 1.2.3 **THE COMMUNITY PLANNING PROCESS IS INTENDED TO ALLOW INDIVIDUAL COMMUNITIES TO WORK AT THEIR OWN PACE WHILE BEST UTILIZING AVAILABLE COMMUNITY AND COUNTY RESOURCES.** ~~Community planning is intended to best utilize the available community and County resources while allowing individual communities to work at their own pace and within available resources.~~ **The community planning process is not static and plans can be amended as new conditions arise, allowing for the community plan to evolve over time as the community changes.**

Page 3:

Lines 44-45

Inset new item:

- a) **EVIDENCE OF MEETING THE REQUIREMENTS OF SECTION 2.1 OR 3.1, AS APPLICABLE TO THE SPECIFIC COMMUNITY.**

Page 7:

Lines 6-9

- b) **DETERMINE ~~Identify~~ the geographical location of the community AND, IF NECESSARY, REFINE THE ORIGINAL PLANNING AREA BOUNDARY. THE FINAL PLANNING AREA BOUNDARY SHALL BE DETERMINED UPON ADOPTION OF THE PLAN. ~~to create a planning area boundary~~**
- 1) **The boundary should be based on both topography and regional context to the County in general (see sections 4.2 and 4.3 of this ordinance).**

Lines 13-19

- 1) **Identify major problems at present that the plan shall examine, including:**
- 1) **Residential, commercial, INDUSTRIAL, and institutional development;**
 - 2) **Water resources;**
 - 3) **Wastewater;**
 - 4) **Open Space and Trails;**
 - 5) **Traffic, ~~and~~ roads, AND OTHER TRANSPORTATION NEEDS;**
 - 6) **Assets to protect in the community.**

Lines 26-28

- e) **... The final product of the survey and public meeting(s) will then serve as an INITIAL outline of the community plan including:**

Page 7:

Lines 32-33

- 5.3.2 **THE COMMUNITY PLANNING COMMITTEE AND COUNTY STAFF ~~County Staff and the community planning committee~~ will then begin drafting a plan. The completed plan SHALL ~~should~~ include each element outlined in this section.**

Lines 44-51

- Insert: 5) **CONSIDER THE LOCAL ECONOMY INCLUDING HOME OCCUPATIONS, SMALL BUSINESS, COMMERCIAL AND INDUSTRIAL NEEDS.**

Page 8:

Lines 28-29

- f) **Examination of local infrastructure:**
 1) **Examine the community's roads and traffic patterns AND OTHER TRANSPORTATION NEEDS;**

Lines 33-37

- g) **Examination of open space and trails in the area:**
 1) **Inventory existing parks, open spaces, trails and natural resource areas;**
 2) **DISCUSS AND prioritize POTENTIAL open space areas, trails, TRAIL corridors and programming needs as identified by community members and the County Open Space and Trails Plan;**

Page 9:

Lines 12-13

- 5.3.3 **As appropriate, staff shall work with the community to develop ordinances which codify policies AS IDENTIFIED ~~outlined~~ in the adopted community plan.**

INSERT: NEW SECTION 5.3.4

- 5.3.4 **FOLLOWING ADOPTION, EACH COMMUNITY PLAN WILL BE REVIEWED EVERY THREE (3) YEARS BY A REPRESENTATIVE COMMUNITY BODY AND COUNTY STAFF. THE REVIEW WILL INCLUDE A MINIMUM OF ONE (1) PUBLIC MEETING IN THE COMMUNITY WITH RESULTS AND/OR RECOMMENDATIONS PRESENTED IN ONE (1) PUBLIC HEARING BEFORE THE BOARD OF COUNTY COMMISSIONERS. COUNTY STAFF WILL ASSIST IN THE COORDINATION AND NOTIFICATION OF BOTH MEETINGS. NOTICE PROCEDURES WILL BE THE SAME AS SECTION 4.7.2 OF THIS ORDINANCE.**

Page 9:

2088690

Lines 41-47

All decision making regarding the community plan shall be made using a consensual process
~~Resolve disagreements by consensus, rather than by majority voting. CONSENSUS IS DEFINED~~
AS GENERAL AGREEMENT BY ALL PARTICIPATING PARTIES. A consensual process is
defined as using multiple viewpoints and opinions to generate viable and effective alternatives
that create the best solution to a problem rather than overpowering a minority opinion or
accepting ineffective compromise positions. ~~Consensus is defined as reaching agreement among all~~
~~parties in the community, and formulating alternatives.~~

Page 10:

Lines 8:

IF APPROPRIATE FOR A COMMUNITY PLAN, THE BOARD, THE PLANNING DIVISION AND/OR THE COMMUNITY PLANNING COMMITTEE MAY INCLUDE ADDITIONAL ELEMENTS AS PART OF A PLAN. IF ADDITIONAL PLANNING ELEMENTS ARE ADDED, THE BOARD SHALL ALLOCATE APPROPRIATE RESOURCES AND DIRECT STAFF TO ASSIST IN RESEARCHING THE ADDED ELEMENT. ADDITIONAL PLANNING ELEMENTS MAY INCLUDE BUT ARE NOT LIMITED TO:

~~The County may assist with research for additional planning elements which include the following:~~

Lines 17:

DELETE THIS LINE – It has been reworded and included in required planning elements – see proposed amendment to page 8, Item g (lines 33-37)

~~g) Identify potential open spaces and trails;~~



2088691

and to Orange

MONTIYA
756 PAGE 50

N/F FLEMMASTER
BOOK 450 PAGE 034

N/F SEDLAC
BOOK 730 PAGE 586

DRAINAGE LOGGAINS
41" BK. 802, PG. 287

N/F SEDLAC
BK. 212, PG. 023

N/F SANCHEZ
BK. 720, PG. 586

N/F LEMASTER
BK. 231, PG. 018

N/F GURULE
BK. 727, PG. 883

N/F KHALSA
BK. 217, PG. 035

SANTA FE CO.
(DEDICATED FOR COUNTY
USE AS PER AGREEMENT)

TO LETTERED
PLAIN, DRAINAGE

- ① N 31°28'24" E 17'
- ② N 21°02'25" E 17'
- ③ N 17°19'19" E 17'
- ④ N 17°02'25" E 17'
- ⑤ N 8°02'25" E 17'
- ⑥ N 7°00'00" E 17'
- ⑦ N 32°00'00" E 17'
- ⑧ N 10°00'00" E 17'
- ⑨ N 10°00'00" E 17'
- ⑩ N 10°00'00" E 17'

DIP SECTION

N/F SALAZAR
BK. 852, PG. 100

N/F FOOTE
BK. 258, PG. 047

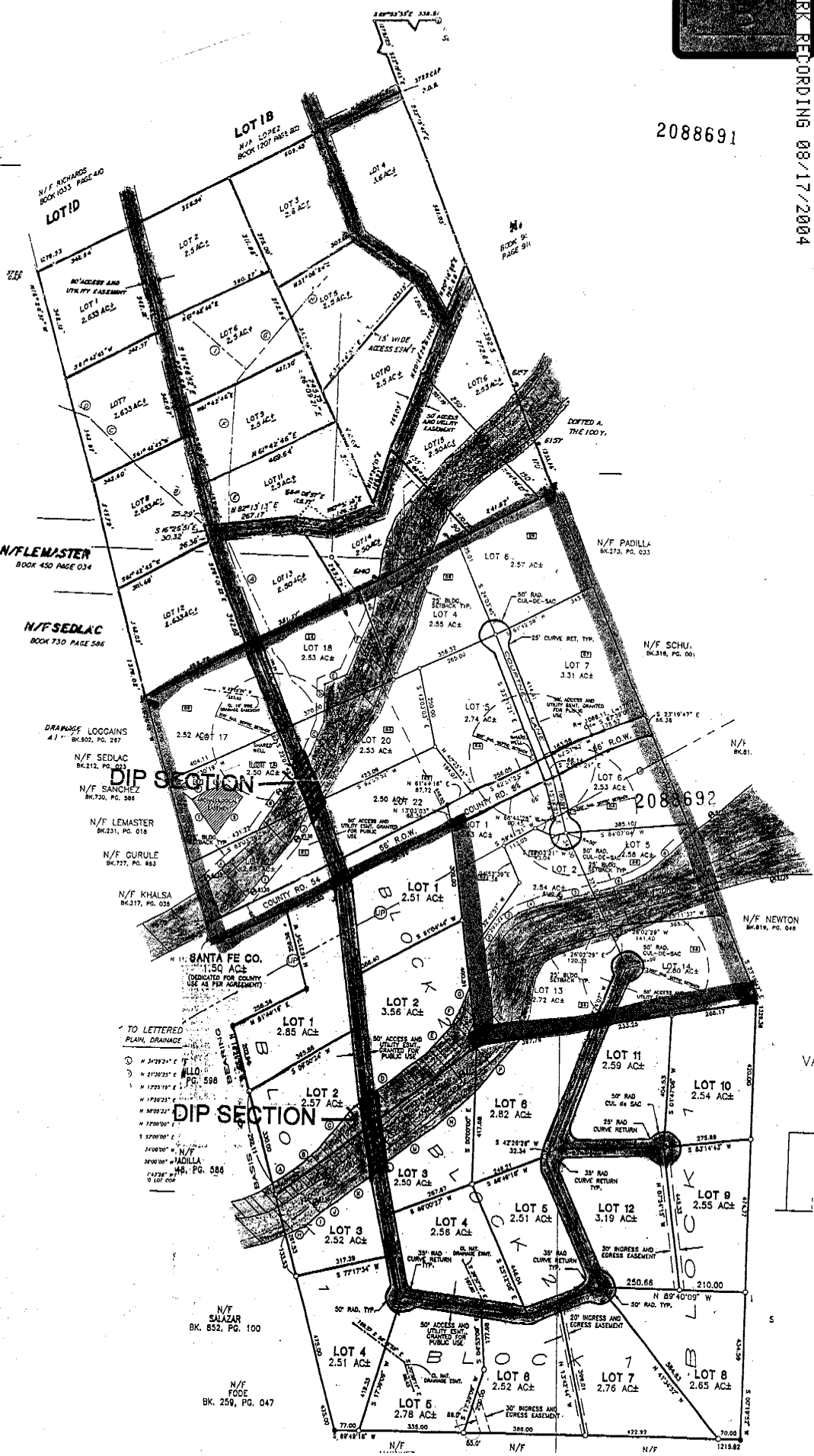
N/F PADILLA
BK. 275, PG. 033

N/F SCHUJ
BK. 816, PG. 001

N/F
BK. 81

N/F NEWTON
BK. 816, PG. 048

2088692



V/

S

La Cienega Valley Association

c/o LCVA President Robert Romero

28 Mesita del Rey

La Cienega, New Mexico 87507

Date: February 11, 2002

Refer to: LCVA:02

2088693

Dear Santa Fe County Commission:

An amendment has been requested by developer Jim Brown to a condition on a preliminary plat for Vallecitos de Gracia, which requires two all weather crossings capable of accommodating a 100 year storm. The amendment would result in a variance of Article V, Section 8.3.4 of the Land Development Code which we believe would set an undesirable precedent for our community.

The board recognizes that in December of 2001 the LCDRC voted to support the variance, and though we respect the role of the board, because of the safety issues associated with this matter, we disagree with their stance and respectfully ask that their decision be reconsidered.

The board asks that the County Commission consider the three following points:

- The only testimony regarding the crossing to the LCDRC was against the variance, by both the County Fire Chief and the La Cienega District Fire Chief.
- The developer did not meet with the LCVA regarding this variance, as it was a condition for approval of the master plan for the development.
- Affected community members stated that the time of the LCDRC meeting hindered participation due to work commitments.
- At the LCDRC November hearing, County Attorney Ann Lovely stated that liability in the event of an incident at the crossings would become the liability of the County if improvements were not made and variance was granted.

Please continue to consider the importance of Land Use Development Code, and its role in the safety of our community.

The board respectfully requests that the voice of the community members be considered and that the variance not be granted.

Sincerely,



Robert Romero
LCVA President



Board Member



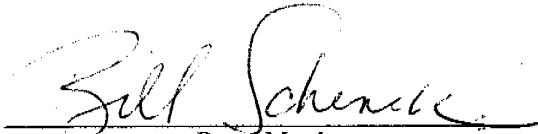
Board Member



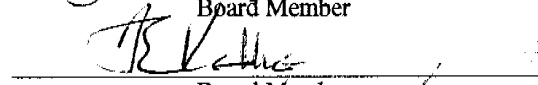
Board Member




Board Member



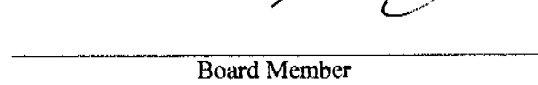
Board Member



Board Member



Board Member



Board Member